





**THE
COMMON
WEALTH
OF
ENGLAND**

BY
The Honourable
Sir Tho: Smith,
Knight.

*Newly Corrected &
Imended.*

LONDON
Printed by W. S. for
John Smithwicke, & are
to be sold at his
Shop in S.
Dunstons
Church-yard,
under the Dial.





Will: Marshall, Sculptor.

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THE
COMMON-
WEALTH

OF *Engl.* 62.334
ENGLAND.

And the manner and Gouverne-
ment thereof.

COMPILED BY THE

Honorable Sir THOMAS SMITH, Knight,
*Doctour of both Lawes, and one of the
principall Secretaries unto two most
worthy Princes, King ED-
WARD, and Queene
ELIZABETH.*

With new Additions of the chiefe Courts
in ENGLAND, and the Offices
thereof by the said
Author.

LONDON,

Printed by *Will. Stansby* for *I. Smethwicke*,
and are to be sold at his shop in Saint
Dunstons Church-yard.

1633

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To the Reader.

NO conceale the graces inspired by God, or the gifts ingrafted by nature, or the vertues atchieued vnto ourselues by industry in all ages, and of all wisemen, was accounted vndutifulnesse, vnkindnesse, and impietie vnto that Commonwealth, in the which, and vnto the which we are both bred and borne: but to suppress the worthy works of any Authour, may justly bee judged not onely injury to the person, but euen enuie at the whole world. Wherefore, chancing vpon this short Discourse compiled by the Honorable Knight Sir *Thomas Smith*, and considering that the same could not but be a great light to the ignorant, and no lesse delight vnto the learned in the Lawes

To the Reader.

and Policie of sundry Regiments:
I thought it part of my dutie, as
well for the reuiuing of the fame
of so notable a man, as for the pub-
like imparting of so pithy a Trea-
tise, to present the same vnto thy
indifferent and discret judgement.
Wherein, although the errours
and rashnesse of Scribes, appea-
ring in the contrarietie, and cor-
ruption of Copies, hapning both
by the length of time since the first
making, as also by the often tran-
scripting, might justly haue beene
mine excuse, or rather discharge:
yet weighing the authoritie of the
Authour together with the graui-
tie of the matter, I made no doubt
but that the reuerence due vnto the
one, and the recompence deserued
by the other, would easily coun-
teruaile all faults committed by a
Clarke and Writer. And whereas
some termes or other matters may
seeme to dissent from the vsuall
phrase of the Common Law of this
Realme: notwithstanding, to him
that

To the Reader.

that will consider that the profes-
sion of the maker was principally
in the Ciuill Lawes, and therefore
not to be expected as one excellent
in both, and also that the finishing
of this worke was in France, farre
from his Library, and in an Am-
bassage, euen in the midst of waigh-
tie Affaires, it cannot, nor ought
not without great ingratitude bee
displeasant, or in any sort disliking.
Wherefore (gentle Reader) accept
in good part my zeale, and this
honorable mans trauaile, assuring
thy selfe that the same framed by
an expert workmaster, and forged
of pure and excellent metall,
will not faile in prouing
to bee a com-
mon in-
strument.

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pall matters contained in this
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THE MANNER OF
GOVERNMENT, OR
POLICIE OF THE
REALME OF
ENGLAND.

CHAP. I.

*Of the diuersities of Common-wealths
or Governments.*

They that haue written heretofore of Common-wealths, haue brought them into three most simple and speciall kinds or fashions of Government. The first, where one alone doth gouerne, is called of the Greekes *Μοναρχία*; The second, where the smaller number, commonly called of them *Αριστοκρατία*; and the third, where the multitude doth rule, *Δημοκρατία*. To rule is vnderstood to haue the
B highest

Demo-
crat.
Monar-
chia.
Aristo-
cracia.

The Common-wealth

highest and supream Authoritie of commandement. That part or member of the Common-wealth is said to rule, which doth controll, correct, and direct all other members of the Common-wealth. That part which doth rule, define and command according to the forme of the gouernment, is taken in euery Common-wealth to be just & Law: As a rule is alway to bee vnderstood to be straight, and to which all workes are to be conformed, and by it to be judged: I doe not meane the *Leſbins* rule, which is conformed to the stone: but the right rule whereby the Artificer and the Architect doe judge the straightnesse of euery mans worke, hee to be reckoned to make his worke perfectest who goeth neereſt to the straightnesse.

CHAP. II.

what is iust or Law in euery Common-wealth or Gouernment.

NOW it doth appeare, that it is profitable to euery Common-wealth
(as

(as it is to euery thing generally & particularly) to be kept in her most perfect estate. Then if that part which doth beare the rule, do command that which is profitable to it, and the commandment of that part which doth rule on that sort, is to bee accepted in euery Common-wealth respectiuely to be iust Iust. (as wee haue said before) it must needs follow, that the definition which *Thrasymachus* did make, that to bee just, which is the profit of the ruling & most strong part (if it be meant of the Citie or Common-wealth) is not so farre out of the way, if it be ciuilly vnderstood, as *Plato* would make it. But as there is profit, and likelihood of profit, so there is right and likelihood of right. And as well may the ruling and foueraigne part command that which is not his profit, as the just man may offend (notwithstanding his just & true meaning) when he would amend that which is amisse, and helpe the Common-wealth, and to doe good vnto it. For in as much as he attempteth to doe contrary to the Law which is alreadie put, he therefore

by the Law is justly condemned, because his doing is contrary to the Law and the Ordinance of that part which doth command.

CHAP. III.

Another Division of Commonwealths.

BVt this matter yet taketh another doubt: for of these manner of rulings by one, by the fewer part, and by the multitude or greater number, they which haue more methodically and more distinctly and perfectly written vpon them, doe make a subdiuision: and diuiding each into two, make the one good and just, and the other euill and vnjust: as, where one ruleth, the one they call a King, or *Βασιλεὺς*, the other *τύραννος*, a Tyrant: where the fewer number, the one they name a gouerning of the best men *Αριστοκρατία*, or *Remp. Optimatum*, the other of the vsurping of a few Gentlemen, or a few of the richer and stronger sort, *ὀλιγαρχία*, or *Paucorum Potestatem*: and where the mul-

multitude doth governe, the one they call a Common-wealth by the generall name πολιτεῖαν, or the rule of the people Δημοκρασίαν, the other, the rule or the vsurping of the popular, or rascall or viler sort, because they bee more in number, Δῆμοκρασίαν ἀνάντων.

CHAP. IV.

Examples of change in the manner of Government.

IN Common-wealths which had long continuance, the diuerſities of times haue made all theſe manners of ruling or Gouvernement to beſcene: as in Rome, Kings, Romulus, Numa, Seruius, Tyrants, Tarquinius, Sylla, Caesar: the rule of beſt men; as in time when the firſt Conſuls were: and the vsurping of a few, as of the Senatours after the death of Tarquinius, and before the ſucceſſion of the Tribunate, and manifeſtly in the Decem-

6 *The Common-wealth*

virate, but more perniciously in the *Trium-virate* of *Cesar*, *Crispus*, and *Pompeius*: and afterward in the *Trium-virate* of *Octavius*, *Antonius*, and *Lepidus*: The Common-wealth and rule of the people, in the repulſing of the *Decem-viri*, and long after, eſpecially after the Law was made, either by *Horatius*, or (as ſome would haue it) *Hortenſius*, *quod plebs ſciuerit, id populum teneat*: And the ruling & vſurping of the popular and rascal, as a little before *Sylla* his reigne, and a little before *Caius Caſars* Reigne. For the vſurping of the Rascalitie can neuer long endure, but neceſſarily breedeth, & quickly bringeth forth a Tyrant. Of this hath *Athens*, *Siracuse*, *Lacedemon*, and other old ancient ruling Cities had experience, and a man need not doubt but that other Common-wealthes haue followed the ſame rate. For the nature of man is, neuer to ſtand ſtill in one manner of eſtate, but to grow from the leſſe

lesse to the more, and decay from the more againe to the lesse, till he cometo the fatal end and destruction, within any turnes, and tymoyles of sicknesse, and recovering, seldome standing in a perfect health neither of a mans body it selfe, nor of the politicke bodie which is compact of the same.

CHAP. V.

Of the question what is right and iust in a Common-wealth.

SO when the Common-wealth is euill gouerned by an euill ruler and vnjust (as in the threelast named which be rather a sicknesse of the politicke body, than perfect and good Estates) if the Lawes be made, as most like they be alwaies, to maintaine that Estate: the question remaineth, whether the obedience of them be just, and the disobedience wrong? the profit and conseruation of that Estate Right

and Iustice, or the dissolution? and whether a good and vpright man, and louer of his Country ought to maintaine and obey them, or to seeke by all means to abolish them? which great and haughty courages haue often attempted: as *Dion* to rise vp against *Dionysius*; *Thrasibulus* against the thirtie Tyrants; *Brutus* and *Cassius* against *Cesar*, which hath beene cause of many commotions in Common-wealths: whereof the judgement of the common people is according to the event and successe: of them which bee learned according to the purpose of the doers, and the estate of the time then present. Certaine it is, that it is alwayes a doubtfull and hazardous matter to meddle with the changing of Lawes and Government, or to disobey the orders of the Rule or Government, which a man doth find already established.

CHAP. VI.

*That Common-wealths or Govern-
ments are not most commonly
simple, but mixt.*

NOW although the Govern-
ments of Common-wealths
be thus diuided into three and cut-
ting each into two, so into sixe :
yet you must not take that ye shall
find any Common-wealth or Go-
uernment simple, pure, and abso-
lute in his sort and kinde, but as
Wise men haue diuided for vnder-
standings sake, and fantasied foure
simple bodie bodies which they cal
Elements : as Fire, Ayre, Water,
Earth, and in a mans Body foure
Complexions or temperatures, as
Cholericke, Sanguine, Flegmaticque
and Melancholicke : not that yee
shall find one vtterly perfect with-
out mixtion of the other, for that
Nature almost will not suffer : but
vnderstanding doth discerne each
nature as in his sinceritie : so sel-

dome or neuer shall you find Common-wealthes or Gouvernements which are absolutely and sincerely made of any of them aboue named, but alwayes mixed with another, and hath the name of that which is more, and ouer-ruleth the other alwayes or for the most part,

CHAP. VII.

The definition of a King and a Tyrant.

WHere one person beareth the rule, they define that to bee the state of a King, who by succession or election commeth with the good will of the people to that Gouvernment, and doth administer the Common-wealth, by the Lawes of the same, and by equity, and doth seeke the profit of the people as much as his owne. A Tyrant they name him, who by force commeth to the Monarchie against the will of the people, breaketh Lawes

Lawes alreadie made, at his pleasure, maketh other without the aduice and consent of the people, and regardeth not the wealth of his Commons, but the aduancement of himselfe his faction and kindred. These definitions doe contain three differences: the obtayning of the authoritie, the manner of administration thereof, and the Butte or Marke whereunto it doth tend and shoot. So as one may be Tyrant by his entry & getting of the Government, and a King in the administration thereof. As a man may thinke of *Octanius*, and peradventure of *Sylla*: For they both coming by tyrannic & violence, to that state, did seeme to trauaile very much for the better order of the Common-wealth: howbeit, either of them after a diuers manner. Another may be a King by a entry, and a Tyrant by administration, as *Nero*, *Domitian*, & *Commodus*: for the Empire came to them by succession. But their administration

sion was vtterly tyrannical, of *Nero* after fīue yeares of *Domitian* and *Commodus*, very shortly vpon their new honour. Some both in the comming to their Empire, and in the Butt the which they shoote at, be Kings, but the manner of their ruling is tyrannicall, as many Emperours after *Cesar* and *Octavius*, and many Popes of *Rome*. The Emperours clayme this tyrannicall power by pretence of that Rogation or *Plebisцитum*, which *Caius Cesar* or *Octavius* obtained, by which all the people of *Rome* did conferre their power and authority vnto *Cesar* wholly.

The Pope groundeth his from Christ (*cui omnis potestas data est in cælo & in terra*) whose Successor he pretendeth to be: yet the generall Councels make strife with him, to make the Popes power either *Aristocratiam*, or at the least *legitimum regnum*, and would faine bridle that *absolutam potestatem*. Some men do judge the same of the Kings

Kings of *France*, and certaine Princes of *Italy*, and other places, because they make and abrogate Lawes and Edicts, lay on Tributes and Impositions of their own will, or by the priuate counsell and aduice of their friends and fauourers onely, without the consent of the people. The people I call that which the word *Populus* doth signifie, the whole bodie, and the three Estates of the Common-wealth: and they blame *Lewes* the Eleuenth, for bringing the administration Royall of *France*, from the lawfull and regulate Reigne, to the absolute, & tyrannicall Power and Gouvernement. Hee himselfe was wont to glory and say, hee had brought the Crowne of *France*, *hors de page*, as one would say, out of Wardship.

CHAP. VIII.
Of the absolute King.

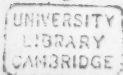
OTher doe call that kind of administration which the *Greeks* doe call *παμβασιλείαν*, not tyranny, but the absolute power of a King, which they would pretend that every King hath, if he would vse the same. The other they call *βασιλείαν νομιμὴν*, or the Royall power Regulate by Lawes: of this I will not dispute at this time. But as such absolute administration in time of Warre, when all is in Armes, and when Lawes hold their peace, because they cannot bee heard, is most necessary: so in time of peace the same is very dangerous, as well to him that doth vse it, and much more to the people vpon whom it is vsed: whereof the cause is the frailtie of mans nature, which (as *Plato* saith) cannot abide or beare long that absolute and vncontrolled authoritie, without swelling into too much

much Pride and Insolencie. And therefore the *Romanes* did wisely, who would not suffer any man to keepe the *Dictatorship* aboue fixe moneths, because the *Dictators* (for that time) had this absolute power, which some *Greekes* named a lawfull tyranny for a time. As I remember, *Aristotle*, (who of all Writers hath most absolutely and methodically treated, of the diuision and natures of Commonwealths) maketh this sort of Government to be one kind of Kings. But all commeth to one effect: for at the first all Kings ruled absolutely, as they who were either the Heads and most ancient of their Families, deriued out of their owne bodies, as *Adam*, *Noe*, *Abraham*, *Iacob*, *Esau*, reigning absolutely ouer their own children and bondmen, as reason was: or else in the rude world amongst barbarous and ignorant people, some onethen, whom God had endued with singular wisdom, to inuent things

necessary for the nourishment and defence of the multitude, and to administer Iustice did so farre excell other, that all the rest were but beasts in comparison of him : and for that excellency, willingly had this authority giuen him of the multitude, and of the Gentiles when he was dead, and almost when he was yet liuing, was taken for a God, of others for a Prophet. Such among the *Iewes* were *Moses*, *Ioshua*, and the other Iudges, as *Samuel*, & c. *Romulus*, and *Numa*, amongst the *Romanes*, *Lycurgus*, and *Solon*, and diuers others among the *Greekes*, *Zamolxis* among the *Thracians*, *Mahomet* among the *Arābians*; And this kinde of rule among the *Greeks* is called *τύραννις*, which of it selfe at the first was not a name odious : But because they who had such rule, at the first, did for the most part abuse the same, waxed insolent and proud, vnjust, and not regarding the Common-wealth, committed such acts as were horrible

ble and odious : As killing men without cause, abusing their wiues and daughters, taking and spoyling all mens goods at their pleasures, and were not Shepheards as they ought to bee, but rather Robbers and Deuourers of the people, wherof some were contemners of God, as *Dionysius*, otherwise they liued like Deuils, and would yet be adored and accounted for Gods : as *Caius Caligula* and *Domitian*: that kind of administration, and manner also, at the first not euill, hath taken the signification, and definition of the vice of the abusers, so that now both in Greeke, Latine, and English, a Tyrant is counted hee, who is an euill King, and who hath no regard to the wealth of his people, but seeketh onely to magnifie himselfe, and his, and to satisfie his vicious and cruell appetite without respect of God, of right, or of the Law : because that for the most part, they which haue had that absolute power, haue been such.

CHAP.



CHAP. IX.

Of the name of King, and the administration of England.

THat which we call in one syllable King in English, the old Englishmen, and the Saxons, from whom our tongue is deriued, to this day call in two syllables, *Cyning*, which whether it commeth of *Gen* or *Ken*, which betokeneth to know and vnderstand, or *Can*, which betokeneth to be able, or to haue power; I cannot tell. The participle absolute of the one wee vse yet, as when wee say, a cunning man, *Vir prudens aut sciens*: the Verbe of the other, as I can do this, *possum hoc facere*. By old and ancient Histories that I haue read, I do not vnderstand that our Nation hath vsed any other generall authoritie in this Realme, neither *Aristocraticall*, nor *Democraticall*, but onely the Royall and Kingly Majestie, which at the first was diuided

ded into many and sundry Kings, each absolutly rainging in his Country, not vnder the subjection of other, till by fighting the one with the other, the ouercommmed alwaies falling to the augmentation of the vanquisher and ouercommer : At the last the Realme of England grew into one Monarchie. Neither one of those Kings, neither he who first had all, tooke any Inuestiture at the hands of the Emperour of *Rome*, or of any other superiour or forreine Prince, but held of God to himselfe, and by his Sword, his People and Crowne, acknowledging no Prince on Earth his Superiour, and so it is kept and holden at this day : Although King *Iohn* (by the rebellion of the Nobilitie, aided with the Daulphin of France his power) to appease the Pope, who at that time possessing the consciences of his subjects, was then also his enemy, and his most grievous torment (as some Histories do witnesse) did resigne the Crowne to his

his Legate *Pandulphus*, and tooke it againe from him, as from the Pope, by faith and homage, and a certaine tribute yeerely. But that act being neither approoued by his people, nor established by Act of Parliament, was forthwith, and euer sithence taken for nothing, either to bind the King, his Successours, or Subjects.

CHAP. X.

What is a Common-wealth, and the parts thereof.

TO be vnderstood hereafter, it is necessary yet to make a third diuision of the Common-wealth by the parts thereof. A Common-wealth is called a societie or common doing of a multitude of Free-men, collected together, and vnited by common accord and couenants among themselues, for the conseruation of themselues as well in peace as in warre. For
 prod

properly an Hoast of men is not called a Common-wealth, but abusively, because they are collected but for a time, and for a fact: which done each diuideth himselfe from others as they were before. And if one man had, as some of the old *Romans* had (if it be true that is written) five thousand, or ten thousand bondmen whom he ruled well, though they dwelled all in one Citie, or were distributed into diuers Villages, yet that were no Common-wealth: for the bondman hath no communion with his Master, the wealth of the Lord is onely sought for, and not the profit of the slaue or bondman. For as they who write of these things haue defined, a bondman or slaue as it were (sauiug life or humane reason) is but the instrument of his Lord, as the Axe, the Saw, the Chessill and Gowge is of the Carpenter. Truth it is, the Carpenter looketh diligently to saue, correct, and amend all these: but it is for his

owne

owne profit, and in consideration of himselfe, not for the instrument sake. And as these be instruments of the Carpenter, so the Plough, the Cart, the Horse, Oxe, or Asse, bee instruments of the Husbandman: and though one Husbandman had a great number of al these, and looked well to them, it made no Common-wealth, nor could not be so called. For the priuate wealth of the Husbandman is only regarded, and there is no mutuall societie or portion, nor Law, nor pleading betweene the one and the other. And (as he saith) what reason hath the Pot to say to the Porter, Why madest thou me thus? or why doest thou breake nice after thou hast made mee? even so is the bondman or slaue which is bought for monie, for he is but a reasonable and liuing instrument, the possession of his Lord and Master, reckoned among his goods, not otherwise admitted to the societie Ciuill, or Common-wealth, but is
part

part of the possession and goods of his Lord. Wherefore, except there be other orders and administrations amongst the Turkes, if the Prince of the Turkes (as it is written of him) doe repute all other his bondmen and slaues (himselfe and his sonnes onely freemen) a man may doubt whether his administration be to be accounted a Commonwealth, or a Kingdome, or he rather to be reputed onely as one that hath vnder him an infinite number of slaues or bondmen, among whom there is no right, Law, nor Commonwealth compact, but onely the will of the Lord and Seignior. Surely none of the old Greekes would call this fashion of Government, *Remp.* or Πολιτειαν for the reasons which I haue declared.

CHAP. XI.

*The first sort, or beginning of an
House or Family, called οἰκονομία.*

THen if this be a Societie, and consisteth onely of free-men, the least part thereof must betwo. The naturallest, and first coniunction of two, toward the making of a further society of continuance, is of the Husband and of the Wife after a diuers sort, each hauing care of the Family, the man to get, to trauaile abroad, to defend; the Wife to saue that which is gotten, to tarrie at home, to distribute that which commeth of the Husbands labour, for the nurtriture of the Children, and Family of them both and to keepe all at home neat and cleane. So nature hath forged each part to his office: the man sterne, strong, bold, aduenturous, negligent of his beauty, and spending: The woman weake, feareful, faire, curious of her beautie and sauing.

Either

Either of them excelling other in wit and wisdom, to conduct those things which appertain to their Office, and therefore where their wisdom doth excell, therein it is reason that each should governe. And without this society of man and woman, the kind of man could not long endure. And to this societie men are so naturally borne, that the Prince of all Philosophers, in consideration of natures, was not afraid to say, that a man by nature is rather desirous to fellow himselfe to another and so to liue in couple, then to adhere himselfe; with many. Although of all things, or liuing creatures, a man doth shew himselfe most politicke, yet can he not well liue without the societie and fellowship Ciuill. Hee that can liue alone, saith *Aristotle*, is either a wilde beast in mans likeness, or else a God rather then a Man. So then the House and Family is the first and most naturall (but priuate) apparance of one of

the best kindes of a Common-wealth, that is called *Aristocratia*, where a few, and the best doe gouerne : and where not one alwayes, but sometime and in some thing another doth beare the rule. Which to maintaine for his part, God hath giuen to the man greater wit, bigger strength, and more courage, to compell the woman to obey by reason, or force : and to the woman beautie, faire countenance, and sweet words, to make the man obey her againe, for loue. Thus each obeyeth and commandeth other, and they two together rule the House. The House I call heere the Man, the Woman, their Children, their Seruants bond and free, their cattle, their household-stuffe, and all other things, which are reckoned in their possession, so long as all these remaine together in one, yet this cannot be called *Aristocratia*, but *Metaphorice*, for it is but an house, and little sparke resembling as it were that Government.

*Domus, seu
Familia.*

CHAP.

CHAP. XII.

*The first and naturall beginning of
a Kingdome: in Greeke Βασιλεία.*

BVt for so much as it is the nature of all things, to increase or decrease: this House thus increasing and multiplying by generation, so that it cannot well be comprehended in one habitation, and the children waxing bigger, stronger, wiser and thereupon naturally desirous to rule, the Father & Mother sendeth them out into couples as it were by prouining or propagation. And the Child by marriage beginneth as it were to roote towards the making of a new stocke, and thereupon another House or Family. So by this propagation or prouining first of one, and then of another, and so from one to another, in space of time of many Houses was made a Street or Village; of many Streets and Villages ioyned together, a Citie or Borough. And

Prouining, or propagation is when a man layeth a branch of a Vine or O-sier, or any other tree into the ground so that it taketh root of it selfe, and may liue though it be cut cleane from the first root or stock
*Tagus, Op-
pidum, Cuius-
sas, Regnum.*

8 *The Common-wealth*

when many Cities, Boroughs, and Villages, were by common and mutuall consent for their conuersion ruled by that one and first Father of them all, it was called a Nation or Kingdome. And this seemeth the first and most naturall beginning and source of Cities, Townes, Nations, Kingdomes, and of all ciuill Societies. For so long as the great Grand-father was aliue and able to rule, it was vnnaturall for any of his Sonnes or Of-spring, to striue with him for the superiortie, or to goe about to gouerne, or any wise to dishonour him, from whom he had receiued life and being. And therefore such a one doth beare the first and naturall example of an absolute, and perfect King. For he loued them as his own Children & Nephewes, cared for them as members of his owne body, provided for them as one hauing by long time more experience then any one, or all of them. They againe honoured him as their Father of
whose


whose bodie they came, obeyed him for his great wisdome & forecast, went to him in doubtfull cases, as to an Oracle of God, feared his curse and malediction as proceeding from Gods owne mouth. He againe vsed nouriture: For each paine put vpon them, hee esteemed as laid vpon himselfe.

CHAP. XIII.

The first and naturall beginning of the rule of a few of the best men, called in Greeke Apisonpatia.

BVt when that great Grand-father was dead, the sonnes of him, and brethren amongst themselves, not hauing that reuerence to any, nor confidence of wisdome in anyone of the, nor that trust the one to the other, betweene whom (as many times it fareth with Brethren) some strifes and brawlings had before arisen: To defend themselves yet from them which were

Welch and Strangers; necessarily agreed among themselves to consult in common, and to beare rule for a time in order, now one; and now another: so that no one might beare alwaies the rule, nor any one be neglected. And by this meanes, if any one failed during his yeare or time by ignorance, the next (being either wise of himselfe, or else by his brothers error and fault) amended it. And in the mean while, at diuers and most times when vrgent necessitie did occurre, they consulted all those heads of Families together within themselves, how to demeane and order their matters best for the conseruation of themselves, & each of their Families generally and particularly. This a few being Heads, and the chiefe of their Families, equall in Birth and Nobilitie, and not much different in riches, gouerned their owne houses, and the descendants of them particularly, and consulted in common vpon publike causes, agreeing also

also vpon certaine Lawes and Orders to be kept amongst them. So the best, chiefeſt, and ſageſt did rule, and the other part had no cauſeto ſtriue with them, nor had no cauſe nor apparance to compare with any of them, neither for age nor diſcretion, nor for Riches or Nobilitie. The Rulers ſought each to keepe and maintaine their Poſteritie, as their Sonnes and Nephewes, and ſuch as ſhould ſucceed them, and carry their names when they were dead, and ſo render them being mortall by nature, immortal by their fame and ſucceſſion of Poſteritie: hauing moſt earneſt care to maintaine ſtill this their couſinage and common Family, as well againſt forreine & barbarous Nations, which were not of their Progenie, Tongue, or Religion, as againſt wild and ſauage beaſts. This ſeemeth the naturall courſe and beginning, or Image of that rule of the fewer number, which is called of the Greekes *Apisonparia*, and
C  of

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of the Latines, *Optimum Res-*
publica.

CHAP. XIV.

The first original, or beginning of
the rule of the multitude called
πολιτεια or Δημοκρατεια.

NOW, as time bringeth an end
of all things, these brethren
being all dead, and their Off-spring
increasing daily to a great multi-
tude, and the reuerence due to the
old Fathers in such and so great
number of equals failing, by the
reason of the death or dotting of the
Elders: each owing their merits of
education a part to their Fathers
and Grand-fathers, and so many
arising, and such equalities among
them, it was not possible that they
should be content to be gouerned
by a few. For two things being
such, as for the which men in so-
cietie and league most striue, that
is, honour and profit, no men of
free

free courage can be contented to be neglected therein, so that they were faine of necessitie to come to that, that the more part should beare the price away in election of Magistrates and Rulers. So that either by course or by lot, each man in turne might bee receiued to beare rule, and haue his part of the honour: and (if any were) of the profit which came by administration of the Common-wealth. For whosoever came of that olde great Grandfathers race, hee accounted himselfe as good of birth as any other. For seruice to the Common-wealth, all, or such a number had done it, as they could not bee accounted few. And if a few would take vpon them to vsurpe ouer the rest, the rest conspiring together would soone be Masters of them, and ruinate them wholly. Whereupon necessarily it came to passe, that the Common-wealth must turne and alter as before from one to a few, so now from a few to ma-

ny and the most part, each of these yet willing to saue the politicke bodie, to conserue the authoritie of their Nation, to defend themselues against all other, their strife being onely for Empire & rule, and who should doe best for the Common-wealth, whereof they should haue experience made by bearing Office and being Magistrates. This I take for the first and naturall beginning of the rule of the multitude, which the Greekes called *Δημοκρατία*: the Latines, some *Respublica*, by the generall name, some *Populi potestas*, some *Census potestas*, I cannot tell how Latinely.

CHAP. XV.

That the Common-wealth or Politie, must be according to the nature of the people.

BY this proceffe and discourse, it doth appeare that the mutations and changes of fashions, of government

uernment in Common-wealths be naturall, and doe not alwaies come of ambition or malice: And that according to the nature of the people, so the Common-wealth is to it fit and proper. And as all these three kinds of Common-wealths are naturall, so when to each partie, or espeece and kind of the people, that is applied which best agreeth, like a garment to the bodie, or shooe to the foot, then the bodie Politicke is in quiet, and findeth ease, pleasure and profit. But if a contrarie forme be giuen to a contrarie manner of people, as when the shooe is too little or too great for the foote, it doth hurt and incumber the convenient vse thereof, so the free people of Nature tyrannized or ruled by one against their wils, were he neuer so good, either faile of courage, and waxe seruile, or neuer rest vntill they either destroy the King and them that would subdue them, or bee destroyed themselves. And againe, another sort there is, which

which without being ruled by one Prince, but set at libertie, cannot tell what they should doe, but either through insolencie, pride, and idlenesse, will fall to robberie, and all mischiefe, and to scatter and dissolue themselves, or wjth foolish ambition & priuate strife consume one another, and bring themselves to nothing. Of both these two wee haue histories enough to beare witnessse, as the Greekes, Romanes, Samnites, Danes, Vandals, and others. Yet must you not thinke that all Common-wealths, administrations and rulings, began on this sort, by prouining or propagation, as is before written: But many times after a great battaile and long Warre, the Captaine who led a multitude of people gathered peraduenture of diuers Nations and Languages, liking the place which he hath by force conquered, tarieth there, and beginneth a Common-wealth after this manner, and for the most part a Kingdome. As
the

Graci.
Romani.
Samnites,
Vandali.
Dani.
Norwegi.
Succi.

the Gothes and Lumbards in Italy, the Frenchmen in Gauls, the Saracens in Spaine, and part of France, the Saxons in great *Brittaine*, which is now called England: Of which, when that one and chiefe Prince is dead, the Nobler sort consult among themselues, and either chuse another Head & King, or diuide it into more Heads and Rulers, so did the Lumbards in Italy, and the Saxons in England: or take at the first a common rule and popular estate, as the Switzers did in their Cantons, and doe yet at this day, or else admit the rule of a certaine few, excluding the multitude and Communaltie, as the Paduans, Veronenſes, and Venetians haue accustomed.

CHAP. XVI.

The diuision of the parts and persons of the Common-wealth.

TO make all things yet cleere before, as we shall goe, there
arise h

ariseth another diuision of the parts of the Common-wealth. For it is not enough to say that it consisteth of a multitude, of Houses and Families, which make Streets and Villages, & the multitude of Streets & Villages make Townes, and the multitude of Townes the Realme, and that Free-men bee considered onely in this behalfe, as Subjects and Citizens of the Common-wealth, and not Bond-men, who can beare no rule nor iurisdiction ouer Free-men, as they who be taken but as instruments, and the goods and possessions of others. In which consideration also wee doe reject women, as those whom Nature hath made to keepe home and to nourish their Family and Children, and not to meddle with matters abroad, nor to beare Office in a Citie or Common-wealth, no more then Children and Infants: except it bee in such cases as the Authoritie is annexed to the Bloud & Progenie, as the Crowne,

a Dutchie, or an Earldome: for there the bloud is respected, not the Age nor the Sexe. Whereby an absolute Queene, an absolute Dutches or Countesse, those I call absolute, which haue the name, not by being married to a King, Duke or Earle, but by being the true, right and next Successours in the dignitie, and vpon whom by right of the bloud that title is descended: These I say, haue the same authoritie, although they bee women or children in that Kingdome, Dutchie, or Earledome, as they should haue had if they had beene men full of age. For the right and honour of the bloud, and the quietnes and fuertie of the Realme, is more to bee considered, then either the tender age as yet impotent to rule or the Sexe not accustomed (otherwise) to intermeddle with publicke affaires, being by common intendment vnderstood, that such Personages neuer doe lacke the counsell of such graue and discreet men as
bee.

bee able to supply all other defects. This (as I said) is not enough : But the Diuision of these which bee participant of the Common-wealth, is one way of them that beare office, the other of them that beare none : The first are called Magistrates, the second priuate men. Besides, the like was among the Romans of *Patricij* and *Plebeij*, the one struing with the other a long time, the *Patricij* many yeeres excluding the *Plebei* from bearing rule, vntill at last all Magistrates were made common betweene them : yet was there another diuision of the Romanes, into *Senatores*, *Equites*, and *Plebs* : the Greeks had also *ἐὐγενὲς καὶ ἀπολλύμενοι*. The French haue at this day, *les nobles & la populaire*, or *gentill homes & villaines* : we in England diuide our men commonly into fouresorts, Gentlemen, Citizens, Yeomen, Artificers and Labourers : of Gentlemen, the first and chiefe are the King, the Prince, Dukes,

Dukes, Marquises, Earles, Viscounts, Barons, and all these are called *κατ' ἐξοχὴν*, the Nobilitie, and all these are called Lords and Noblemen: next to these bee Knights, Esquires, and simple Gentlemen.

CHAP. XVII.

Of the first part of Gentlemen of England, called Nobilitas Major.

DVkes, Marquises, Earles, Viscounts, and Barons either be created by the Prince, or come to that honour by being the eldest Sonnes, as highest and next in succession to their Parents. For the eldest of Dukes Sonnes during his Fathers life is called an Earle: an Earles Sonne is called by the name of a Viscount or Baron, or else according as the Creation is. The Creation I call the first donation and condition of the honour (given by the Prince for good service done

Nobilitas major. Eldest Sonnes of Dukes are not Earles by birth, but Lords, and take their place above Earles, and so are Earles eldest Sons in respect of Barons. Esquires of honour, or Lords.

done by him, and aduancement that the Prince will bestow vpon him) which with the title of that honour, is commonly (but not alwayes) giuen to him and to his Heires, Males onely: the rest of the Sonnes of the Nobilitie, by the rigour of the Law bee but Esquires, yet in common speech, all Dukes, and Marquises Sonnes, and the eldest Sonne of an Earle bee called Lords. The which name commonly doth agree to none of lower degree then Barons, excepting such onely, as be thereunto by some speciall Office called. The Baronie or degree of Lord's, doth answer to the dignitie of the Senators of Rome, and the title of our Nobilitie to their *Patricij*: when *Patricij* did betoken *Senatores, aut Senatorum filios*. *Census Senatorum* was in Rome, at diuers times diuers, and in England no man is created a Baron, except he may dispend of yeerly reuenue one thousand pounds, or a thousand marks
at

at the least. Viscounts, Earles, Mar-
queses, and Dukes more, accord-
ing to the proportion of the de-
gree and honour, but though by
chance hee or his Sonne haue lesse,
he keepeth his degree: but if they
decay by excesse, and be not able
to maintaine the honour (as *Senato-
res Romani* were *amoti Senatu*)
so sometimes they are not admitted
the vpper House in the Parliament,
although they keepe the name of
Lord still.

CHAP. XVIII.

*Of the second sort of Gentlemen,
which may be called Nobilitas
minor, and first of Knights.*

NO man is a Knight by succes-
sion, no not the King or
Prince. And the name of Prince
in England κατ' ἐξοχὴν betokeneth
the eldest Son or Prince of Wales:
although the King himselfe, his el-
dest

deft Son, & all Dukes be called by generall name Princes. But as in France the Kings eldeft Sonne hath the title of Daulphin, and hee or the next Heire apparant to the Crowne is Monfire, fo in England the Kings eldeft Sonne is called *κατ' ἐξοχήν* the Prince, Knights therefore be not borne but made, either before the battell to incourage them the more to adventure their liues, or after the conflict, as advancement for their hardines & manhood already shewed: or out of the war for some great seruice done, or some good hope through the vertues which do appeare in them. And then are made either by the King himfelfe, or by his Commiffion and Royall Authoritie, giuen for the fame purpofe, or by his Lieutenant in the Warres, who hath his Royal and abfolute power committed to him for that time. And that order feemeth to anfwere in part to that which the Romanes called *Equites Romanos*, differing in fome points, & agreeing in other,

as their Cōmon-wealth & ours do differ & agree: for neuer in al points one Common-wealth doth agree with another, nor long time any one Cōmon-wealth with it self. For all changeth continually to more or lesse, and still to diuers and diuers orders, as the diuersitie of times doe present occasion, and the mutabilitie of mens wits doth inuent and assay new wayes to reforme and amend that wherein they doe find fault, *Equites Romani*, were chosen *ex censu*, that is, according to their substance and riches. So be Knights in England most commonly, according to the yeerely reuenue of their Lands, being able to maintaine that estate: yet all they that had *Equestrem censum, non legebantur Equites*. No more are all made Knights in England that may dispend a Knights Land or Fee, but they onely whom the King will so honour. The number of *Equites* was vncertaine, and so it is of Knights, at the pleasure of the Prince, *Equites Romani*,

mani had *Equum publicum*. The Knights of England haue not so, but finde their owne Horse themselves in peace-time, and most vsually in Warres.

Census Equeſter was among the Romanes at diuers times of diuers value : but in England whosoeuer may dispend of his free Lands forty pounds sterling of yeerely reuenue, by an old Law of England, either at the Coronation of the King, or Marriage of his Daughter, or at the dubbing of the Prince Knight, or some such great occasion, may be by the King compelled to take that Order and Honour, or to pay a fine, which many not so desirous of Honour as of Riches, had rather disburſe. Some, who for causes are not thought worthy of that Honour and yet haue abilitie, neither be made Knights, though they would, and yet pay the fine of forty pounds sterling at that time when this Order began, which maketh now a hundred and twentie pound

pound of currant money of England: as I haue more at large declared in my Booke of the diuersitie of Standards, or the valour of Monies.

When the Romanes did write, *Senatus populusque Romanus*, they seemed to make but two Orders, that is, of the Senate, and of the people of Rome, and so in the name of people they contained *Equites & Plebem*: so when we in England doe say the Lords and the Commons: the Knights, Esquires, and other Gentlemen, with Citizens, Burgeses and Yeomen, be accounted to make the Commons. In ordaining of Lawes, the Senate of Lords of England is in one house, where the Archbishops & Bishops also be, and the King or Queene for the time being as chief, the Knights and all the rest of the Gentlemen, Citizens and Burgeses, which bee admitted to consult vpon the greatest affaires of the Realme, bee in another house by themselves, and
that

that is, called the House of the Commons as we shall more clearly describe when we speake of the Parliament. Whereupon this word Knight is deriued, and whether it do betoken no more but that which *Miles* doth in Latine, which is a Souldier, might be moued as a question. The word Souldier now seemeth rather to come of sold and payment, and more to betoken a waged or hired man to fight, than otherwise, yet *Cæsar* in his Commentaries called *Soldures*, in the tongue *gallois*, men who deuoted and swore themselues in a certaine band or oath one to another, and to the Captaine; which order if the Almaines did follow, it may be, that they who were not hired, but being of the Nation, vpon their owne charges, and for their advancement, and by such common oath or band that did follow the Warres (were possibly) κατ' ἐξοχήν called Knights or *Milites*, & now among the Almaines some are called

led Lance-knights, or Souldiers of their band not hired, although at this day they be for the most part hirelings. Or peradventure it may bee that they which were next about the Prince, as his Guard and Seruants, picked or chosen men out of the rest, being called in the Almaine Language *Knighten*, which is as much to say as Seruants: these men being found of good Seruice, the word afterward was taken for an Honour, and for him who maketh profession of Armes. Our Language is so changed, that I dare make no judgement thereof. Now wee call him Knight in English, that the French calleth *Chenualier*, and the Latine *Equitem* or *Equestris ordinis*.

And when any man is made a Knight, hee kneeling downe, is strooken of the Prince, with his Sword naked, vpon the backe or shoulder, the Prince saying, *ius or sois Chenualier au nom de Dieu*, and (in times past) they added Saint

D

George.

George, and at his arising the Prince faith *anawncer*. This is the manner of dubbing of Knights at this present, and that terme dubbing, was the old terme in this point, and not Creation. At the Coronation of a King or Queene, there be Knights of the Bath made, with long and more curious Ceremonies, Knights Bannerets are made in the Field, with the Ceremonie of cutting of the point of his Standart, and making it as it were a Banner: he being before a Batcheler Knight, is now of a higher degree, allowed to display his Armes in a Banner as Barons do. But this order is almost growne out of vse in Engand. But howsoeuer one be dubbed or made a Knight, his Wife is by and by called a Ladie, as well as a Barons Wife: hee himselfe is not called Lord, but hath to his name in common appellation added this syllable Sir, as if he before were named *Thomas, William, Iohn, or Richard,* after-

afterward he is alwayes called Sir *Thomas*, Sir *William*, Sir *Iohn*, Sir *Richard*, and that is the tearme which men giue to Knights in England. This may suffice at this time, to declare the Order of Knighthood, yet there is another Order of Knights in England, which be called the Knights of the Garter. King *Edward* the third after hee had obtained many notable victories, King *Iohn* of France, King *James* of Scotland, being both Prisoners in the Tower of London at one time, and King *Henry* of Castile the Bastard expelled out of his Realme, and *Don Pedro* restored vnto it by the Prince of Wales, and Duke of Aquitaine called the Black Prince, inuented a societie of honour, and made a choice out of his owne Realme and Dominions, and all Christendome: and the best and most excellent renowned persons in Vertues and Honour, Hee did adorne, with that Title to bee

D 2 Knights

Knights of his Order, gaue them a Garter decked with Gold, Pearle & precious stones, with the buckle of Gold, to weare daily on the left legge onely, a Kirtle, Gowne, Cloke, Chaperon, Coller, and other August and magnificall apparell both of stufte and fashion exquisite and heroicall, to weare at high Feasts, as to so high and Princely an Order was meete: of which Order he and his Successors Kings and Queenes of England to be the Souereigne, and the rest by certaine Statutes & Lawes among themselves, be taken as Brethren and Fellowes in that Order, to the number of six and twenty. But because this is rather an ornament of the Realme, than any Policie or Government thereof, I leaue to speake any further of it.

CHAP. XIX.

Of Esquire.

E *Scuier* or *Esquire* (which wee call commonly *Squire*) is a French word, and betokeneth *Scutigerum*, or *Armigerum*, and bee all those which beare Armes (as we call them) or Armories (as they terme them in French) which to beare is a testimonie of the Nobilitie or Race from whence they doe come. These bee taken for no distinct order of the Commonwealth, but doe goe with the residue of the Gentlemen: saue that (as I take it) they bee those who beare Armes, testimonies (as I haue said) of their race, and therefore haue neither Creation nor Dubbing: or else they were at the first Costerels, or the Bearers of the Armes of Lords or Knights, and by that had their name for a dignitie and honour, giuen to distinguish them from a common Soul-

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dier, called in Latine, *Gregarius*
Miles.

CHAP. XX.

Of Gentlemen.

Gentlemen bee those whom
their bloud and race doth
make noble and knowne, *Eὐγενής*
in Greeke, the Latines call them
all *Nobiles*, as the French *Nobles*.
Eὐγενεία or *Nobilitas* in Latine is
defined, honour or title giuen, for
that the Ancestors haue beene no-
table in riches or vertues or (in
fewer words) old riches or prow-
esse remayning in one stocke.
Which if the Successors doe keepe
and follow, they be *verè Nobiles*,
and *Eὐγενής*: if they doe not, yet
the fame and wealth of their An-
cestors, serue to couer them so long
as it can, as a thing once gilted
though it be Copper within, till
the gilt be worne away. This hath
his

his reason, for the Etymologie of the name serued the efficacie of the word. *Gens* in Latine betokeneth the race and surname, so the Romans had *Cornelios*, *Sergios*, *Appios*, *Fabios*, *Amilios*, *Pisones*, *Iulios*, *Brutos*, *Valerios* of which who were *Agnati*, and therefore kept the name, were also *Gentiles*, and remayning the memory of the glory of their Progenitours fame, were Gentlemen of that or that race. This matter made a great strife among the *Romans*, when those which were *noni homines*, were more allowed for their vertues new and newly showne, than the old smell of ancient race, newly defaced by the euill life of their Nephewes, and Discendents could make the other to be. Thus the *Cicerones*, *Catones*, and *Marij* had much ado with those Ancients, and therefore said *Iuuenal*:

*Malò pater tibi sit Therfitès,
dammò tu sis*
D 4 *Eacidi*

Æacidi similis Vulcaniaque arma capessas :

Quàm te Therfiti similem producat Achilles.

But as other Common-wealthes were faine to doe, so must all Princes necessarily follow : that is, where vertue is to honour it. And although vertue of ancient race be easier to be obtained, as well by the example of the Progenitors, which encourageth, as also through habitie of education and bringing vp, which enableth, and lastly, the enraced loue of Tenants and Neighbours to such Noblemen and Gentlemen, of whom they hold, and by whom they doe dwell, which pricketh forward to ensue in their Fathers steps : So if all this doe faile (as it were great pitie it should) yet such is the nature of all humane things, & so the World is subject to mutabilitie that it doth many times faile : but when it doth, the Prince and Common
wealth

wealth haue the same power that their Predecessours had, and as the Husbandman hath to plant a new tree where the old faileth, so hath the Prince to honour vertue where hee doth find it, to make Gentlemen, Esquires, Knights, Barons, Earles, Marquesses & Dukes, where he seeth vertue able to beare that honour or merits, and deserues it, and so it hath alwayes been vsed among vs. But ordinarily the King doth only make Knights, & create Barons or high degrees: for as for Gentlemen, they bee made good cheape in *England*. For whosoever studieth the Lawes of the Realme, who studieth in the Vniuersities, who professeth liberall Sciences: and to be short, who can liue idly, and without manuell labour, and will beare the port, charge and countenance of a Gentleman, hee shall bee called Master, for that is the Title which men giue to Esquires, and other Gentlemen, and shall be taken for a Gentleman. For

true it is with vs as he said; *Tanti e-
ris alijs, quanti tibi fueris*: And
(if need be) a King of Herald's shall
also giue him for money Armes
newly made and inuented, the title
whereof shall pretend to haue been
found by the said Herald, in per-
using and viewing of old Registers,
where his Ancestors in times past
had beene recorded to beare the
same. Or if hee will doe it more
truly, and of better faith, hee will
write that for the merits of that
man, and certaine qualities, which
he doth see in him, and for sundry
noble Acts which hee hath perfor-
med: hee by the authoritie which
hee hath, as King of Herald's and
Armes, giueth to him & his heires,
these and these Armes: which being
done, I thinke hee may be called a
Squire, for hee beareth euer after
those Armes. Such then are called
sometime in a scorne, Gentlemen of
the first head.

CHAP. XXI.

Whether the manner of England in making Gentlemen so easily, is to be allowed.

A Man may make doubt and question, whether this manner of making Gentlemen is to be allowed or no, and for my part I am of that opinion, that it is not amisse. For first the Prince looseth nothing by it, as he should doe if it were in *France*: for the Yeoman or Husbandman is no more subject to taile or taxe in *England*, than the Gentleman: no, in euery payment to the King the Gentleman is more charged, which he beareth the gladlier, and dareth not gainsay, for to saue and keep his honour and reputation. In any Shew or Muster, or other particular charge of the Towne where he is, he must open his purse wider, and augment his portion aboue others, or else he doth diminish his reputation. As for
their

their outward shew, a Gentleman (if he will be so accounted) must go like a Gentleman, a Yeoman like a Yeoman, & a Rascall like a Rascal: and if he be called to the Warres, hee must and will (whatsoever it cost him) array himselfe, and arme him according to the vocation which he pretendeth: he must shew also a more manly courage, and tokens of better education, higher stomacke, and bountifuller liberallitie than others, and keepe about him idle Seruants, who shall doe nothing but waite vpon him. So that no man hath hurt by it but he himselfe, who hereby perchance will beare a bigger saile than he is able to maintaine. For as touching the policie and gouernment of the Common-wealth, it is not those that haue to doe with it, which will magnifie themselves, and goe in higher buskins than their estate will beare, but they which are to be appointed, are persons tried and well knowne, as shall be declared hereafter.

CHAP. XXII.

Of Citizens and Burgesſes.

NExt Gentlemen be appointed Citizens and Burgesſes, ſuch as not onely be free, and receiued as Officers within the Cities, but alſo be of ſome ſubſtance to beare the charges. But theſe Citizens and Burgesſes, be to ſerue the Common-wealth, in their Cities and Burrowes, or in Corporate Townes where they dwell. Generally in the Shires they be of none account, ſaue only in the common aſſembly of the Realme to make Lawes which is called the Parliament. The ancient Cities appoint foure, and each Burrow two, to haue voyces in it, and to giue their conſent or diſſent, in the name of the Citie or Burrow for which they bee appointed.

CHAP. XXIII.

Of Yeomen.

THose whom we call Yeomen, next vnto the Nobilitie, Knights & Squires, haue the greatest charge and doings in the Common-wealth, or rather are more trauelled to serue in it then all the rest: as shall appeare hereafter. I call him a Yeoman whom our Lawes doe call *Legalem hominem*, a word familiar in Writs and Enquests, which is a freeman borne English, and may dispend of his owne free Land in yeerely reuenue to the summe of fortie shillings sterling. This maketh (if the just value were taken now to the proportion of monies) fixe pound of our currant money at this present. This sort of people confesse themselves to be no Gentlemen, but giue the honour to all which be or take vpon them to be Gentlemen, and yet they haue a certaine preheminence.

nence, and more estimation then Labourers and Artificers, & commonly liue wealthily, keepe good houses, and doe their businesse and trauell to acquire riches: these be (for the most part) Farmours vnto Gentlemen, which with grazing, frequenting of Markets, and keeping Seruants not idly, as the Gentleman doth, but such as get both their owne liuing and part of their Masters, and by these meanes doe come to such wealth, that they are able & daily doe buy the Landis of vnthrifitie Gentlemen, and after setting their Sonnes to the Schoole at the Vniuersities, to the Lawes of the Realme, or otherwise leauing them sufficient Lands wheron they may liue without labour, doe make their said Sonnes by those meanes Gentlemen: These bee not called Masters, for that (as I said) pertaineth to Gentlemen only. But to their surnames men adde Goodman: as if the surname bee *Luter*, *Finch*, *White*, *Browne*, they are called

called Goodman *Luter*, Goodman *Finch*, Goodman *White*, Goodman *Browne*, amongst their Neighbours. I meane not in matters of importance, or in Law. But in matters of Law and for distinction, if one were a Knight, they would write him (for examples sake) Sir *John Finch* Knight, so if he be an Esquire, *John Finch* Esquire or Gentleman, if hee bee no Gentleman, *John Finch* Yeoman. For amongst the Gentlemen they which claime no higher degree, & yet be to bee exempted out of the number of the lowest sort thereof, bee written Esquires. So amongst the Husbandmen, Labourers, the lowest and rascall sort of the people, such as be exempted out of the number of the rascabilitie of the popular, bee called and written Yeomen, as in the degree next vnto Gentlemen. These are they which old *Cato* calleth *Aratores*, and *optimos ciues in Republica*, and such as of whom the Writers of Com-
mon-

mon-wealths praise to haue many in it. *Aristotle* namely reciteth *μεδανας μεσσηνιας*: these tend their owne businesse, come not to meddle in publike matters and iudgements, but when they are called, and glad when they are deliuered thereof, are obedient to the Gentlemen and Rulers, and in warre can abide trauaile and labour; as men vsed to fight for their Lords of whom they hold their Lands, for their wiues and children, for their Country and Nation, for praise and honour against they come home, and to haue the loue of their Lord and his children, to be continued towards them and their children, which haue aduentured their liues for and with him and his. These are they which in the old world gate that honour to England, not that either for wit, conduction, or for power they are or were to be compared to the Gentlemen, but because they be so many in number, so obedient

at the Lords call, so strong of body, so hard to endure paine, so couragious to aduenture with their Lords or Captaine, going with, or before them, for else they be not hastie nor neuer were, as making no profession of knowledge of warre.

These were the good Archers in times past, and the stable troupe of Footmen that affraid all France, that would rather die all, then once abandon the Knight or Gentleman their Captaine, who at those dayes commonly was their Lord, and whose Tenants they were, ready (besides perpetuall shame) to be in danger of vndoing themselves, and all theirs, if they should shew any signe of cowardise, or abandon the Lord, Knight or Gentleman of whom they held their liuing. And this they haue amongst them from their forefathers, told one to another. The Gentlemen of France, and the Yemen of England, are renowned,

med, because in battaile of Horsemen, France was many times too good for vs, as wee againe alway for them on foot. And Gentlemen for the most part bee men at armes and horsemen, and Yeomen commonly on foot: howsoeuer it was, yet the Gentlemen had alwayes the conduction of the Yeomen, and as their Captaines were either afoot or vpon a little Nagge with them, & the Kings of England in fough-ten battailes, remayning alwayes among the footmen, as the French Kings among their horsemen. Each Prince thereby, as a man may ghesse, did shew where he thought his strength did consist. What a Yeoman is I haue declared, but from whence the word is deriued it is hard to say: it cannot bee thought that Yeoman should bee said of a young man, for commonly wee doe not call any a Yeoman till he be married, and haue children, and as it were, haue some authoritie among his Neighbours.

Worke

German in the Saxon is a married man, and hereof cometh our Yeoman, for after marriage men are accounted settled members in the Common-wealth, but not before. A Yonker cometh of yong heire which is a sonne and heire to a Gentleman, or a yong Gentleman.

Yonker in Low Dutch betokeneth a meane Gentleman, or a gay fellow. Possibly our Yeomen not being so bold as to name themselves gentlemen, when they came home, were content when they had heard by frequentation with low Dutchmen, of some small Gentleman (but yet that would be counted so) to be called amongst them Yonker-man, they calling so in warres by mockage or in sport the one another, when they came home, Yonker-man, and so Yeoman: which word now signifieth among vs, a man well at ease, and hauing honestly to liue, yet not a Gentleman: whatsoeuer that word Yonker-man, yong man, or Yeoman doth more or lesse signifie to the Dutchmen.

CHAP. XXIII.

*Of the fourth sort of men which
doe not rule.*

THe fourth sort or classe amongst vs, is of those which the old Romans called *capite sensu proletarij* or *operarij*, day labourers, poore Husbandmen, yea, Merchants or Retailers which haue no free Land, Copy-holders, and all Artificers, as Tailors, Shoemakers, Carpenters, Brick-makers, Brick-layers, Masons, &c. These haue no voice nor authoritie in our Common-wealth, and no account is made of them, but only to be ruled, and not to rule other, and yet they be not altogether neglected. For in Cities and Corporate Townes for default of Yeomen, Enquests and Iuries are impannelled of such manner of people. And in Villages they be commonly made Church-wardens, Ale-cunners, and many times Con-

Constables, which Office toucheth more the Common-wealth, and at the first was not imployed vpon such low and base persons. Wherefore generally to speake of the Common-wealth, or Politie of England, it is gouerned, administred, and managed by three sorts of persons, the Prince, Monarch, and head Gouvernour, which is called the King; or if the Crowne fall to a woman, the Queene absolute, as I haue heretofore said: In whose name and by whose authoritie all things are administred. The Gentlemen, which be diuided into two parts, the Barony or estate of Lords containing Barons and all that bee about the degree of a Baron, (as I haue declared before:) and those which bee no Lords, as Knights, Esquires, and simply Gentlemen.

The third and last sort of persons, is named the Yeomanry: Each of these hath his part and administration in iudgments, corrections

rections of defaults , in election
of Offices , in appointing and col-
lection of Tributes and Subsi-
dies or in making Lawes
as shall appeare
hereafter. .

THE



THE SECOND BOOKE:

CHAP. I.

*The diuision and definition of the
Lawes of this Realme in generall.*

THe Lawes of Iudgment
England consist } and
in two points, } Practice.

In Iudgement are } Persons.
considered the } Place.
} Matter, and
} Manner.

The persons } Iudges in the courts
in judgement } Sergeants and
are the } Counsellors.

In practice are con- } Persons
sidered the } and their
} Office.

E

The

The persons are } Protonotaries,
 } Solicitors, and
 } Attorneies.

Their office is to prepare the matter, and to make it ready for the Iudges to determine.

The Protonotaries are the Clerks in the Court, which doe record the matters hanging in judgement, and doe frame the pleading, enter the Rules and Orders of the Court, the Verdicts and Iudgements giuen in the same.

Solicitors are such, as being learned in the Lawes, and informed of their Masters cause, doe informe and instruct the Counsellors in the same.

Attorneies are such as by experience haue learned and doe know the orders and manner of proceeding in euery Court where they serue, and doe purchase out Writts and Proceffe belonging to their Clients cause. They see to his Suits, that hee bee not hindred by negligence.

gence. They pay the fees belonging to the Courts, & prepare the cause for judgement.

The places for judgement are the Courts where sentence is given, and the Lawes made : as the Parliament, Chancery, Kings Bench, the Common Pleas, the Exchequer, the Court of Wards, the Starre Chamber, the Court of Requests, and the Dutchie Court of Lancaster.

The matter of the Law is } Justice,
and
Equity.

The manner of their severall proceedings, followeth.

CHAP. II.

*Of the Parliament, and the
authoritie thereof.*

THe most high and absolute power of the Realme of England consisteth in the Parliament. For as in Warre where the King

himselfe in person, the Nobilitie, the rest of the Gentilitie, and the Yeomanrie are, is the force and power of England: So in peace & consultation where the Prince is to giue life, and the last and highest commandement: the Baronie or Nobilitie for the higher: the Knights, Esquires, Gentlemen and Commons for the lower part of the Common-wealth: the Bishops for the Clergie be present to aduertise, consult and shew what is good and necessary for the Commonwealth, and to consult together; and vpon mature deliberation, euery Bill or Law being thrice read and disputed vpon in either house, the other two parts, first each a part, and after the Prince himselfe in presence of both the parties, doth consent vnto and alloweth. That is, the Princes and whole Realmes Deed: wherupon iustly no man can complaine, but must accomodate himselfe to find it good & obey it. That which is done by this consent

sent is called firme, stable and *san-ctum*, and is taken for Law. The Parliament abrogateth old Lawes, maketh new, giueth order for thinges past, and for thinges hereafter to bee followed, changeth right and possessions of priuate men, legitimateth Bastards, establisheth formes of Religion, altereth Waights and Measures, giueth forme of succession to the Crowne, defineth of doubtfull Rights, whereof is no Law already made, appointeth Subsidies, Tails, Taxes, and Impositions, giueth most free pardons and absolutions, restoreth in Bloud and Name, as the highest Court condemneth or absolueth them whom the Prince will put to that triall. And to be short, all that euer the people of Rome might doe, either *Centuriatis Comitibus*, or *Tributis*, Alias tribu-
nary. the same may be done by the Parliament of England, which representeth, and hath the power of the whole Realme, both the head and

bodie. For euery Englishman is intended to bee there present either in person, or by procuration and atturny, of what preheminence, state, dignitie or qualitie soeuer he be, from the Prince, (be hee King or Queene) to the lowest person of England. And the consent of the Parliament, is taken to bee euery mans consent.

The Iudges in Parliament are the King or Queenes Majestie, the Lords Temporall and Spirituall, the Commons represented by the Knights and Burgessees of euery Shire and Borough Towne. These all, or the greater part of them and that with the consent of the Prince for the time being, must agree to the making of Lawes.

The Offices in Parliament are the Speakers; two Clarkes, the one for the Higher House, the other for the Lower, and Committies.

The Speaker is he that doth commend and preferre the Bills exhibited into the Parliament, and is the
mouth

mouth of the Parliament. Hee is commonly appointed by the King or Queene, though accepted by the assent of the House.

The Clarkes are the keepers of the Parliament Rolls and Records, and of the Statutes made, and haue the custodie of the priuate Statutes not printed.

The Committies are such as either the Lords in the higher House, or Burgessees in the Lower House, doe choose to frame the Lawes vpon such Bills as are agreed vpon, and afterward to bee ratified by the same Houses.

CHAP. III.

*The forme of holding the
Parliament.*

THe Prince sendeth forth his Rescripts or Writts to euery Duke, Marquesse, Baron, and euery other Lord Temporall or Spirituall, who hath voice in the Parliament,

ment, to be at his great counsell of Parliament such a day (the space from the date of the Writte is commonly at the least forty dayes) hee sendeth also Writs to the Sheriffes of euery Shire, to admonish the whole Shire to choose two Knights of the Parliament in the name of the Shire, to heare and reason, and to giue their aduise and consent in the name of the Shire, and to bee present at that day: likewise to euery Citie and Towne, which of ancient time hath beene wont to find Burgeesses of the Parliament, so to make election, that they might be present there at the first day of the Parliament. The Knights of the Shire be chosen by all the Gentlemen and Yeomen of the Shire, present at the day assigned for the election: the voice of any absent can be counted for none. Yeomen I call here (as before) that may dispend at the least forty shillings of yeerely rent of free Land of his owne. These meeting at one day, the two
who

who haue the more of their voices, be chosen Knights of the Shire for that Parliament: likewise by the plurality of the voices of the Citizens and Burgeses, be the Burgeses elected. The first day of the Parliament, the Prince and all the Lords in their Robes of Parliament do meet in the Higher House, where after Prayers made, they that be present are written, and they that be absent vpon sicknesse, or some other reasonable cause (which the Prince will allow) doe constitute vnder their hand and seale, some one of those who be present, as their Procurer or Atturney, to giue voice for them, so that by presence, or Atturney, & proxy they be all there, all the Princes and Barons, and all Archbishops and Bishops, and (when Abbots were) so many Abbots as had voice in Parliament. The place where the assembly is, is richly tapested and hangd, a Princely and Royall Throne as appertaineth to a King,

set in the middest of the higher place thereof. Next vnder the Prince sitteth the Chancellor, who is the Voyce and Oratour of the Prince. On the one side of that House or Chamber, sitteth the Archbishops and Bishops, each in his ranke, on the other side the Dukes and Barons.

In the middest thereof vpon Wool-sackes sitteth the Iudges of the Realme, the Master of the Rols, and the Secretaries of estate. But these that sit on the Wool-sackes haue no voyce in the House, but onely sit there to answere their knowledge in the Law, when they be asked, if any doubt arise among the Lords: The Secretaries do answere of such letters or things passed in counsell, whereof they haue the custodie and knowledge: and this is called the vpper house, whose consent and dissent is giuen by each man seuerally, and by himselfe, first for himselfe, and then seuerally for so many as hee hath Letters and Proxies,

Proxies, when it commeth to the question, saying onely content or not content, without further reasoning or replying. In this meane time the Knights of the Shires, and Burgeses of Parliament (for so they are called that haue yoice in Parliament, and are chosen as I haue said before to the number betwixt three and foure hundred) are called by such as it pleaseth the Prince to appoint, into an other great House or Chamber by name, to which they answere: and declaring for what Shire or Towne they answere, then they are willed to choose an able and discret man, to bee as it were the mouth of them all, and to speake for, and in the name of them, and to present him so chosen by them to the Prince: which done they comming al with him to a Barre, which is at the nether end of the vpper House, there he first prayseth the Prince, then maketh his excuse of inabilitie, and prayeth the Prince that hee would

command the Commons to choose another. The Chancellour, in the Princes name doth so much declare him able, as hee did declare himselfe vnable, and thanketh the Commons for choosing so wise, discreet, and eloquent a man, and willeth them to goe and consult of Lawes for the Common-wealth. Then the Speaker maketh certaine requests to the Prince in the Commons; first, that his Maiestie would bee content that they may vse and enjoy all their liberties and priuiledges that the common house was wont to enjoy.

Secondly, that they may frankly and freely say their mindes, in disputing of such matters as may come in question, and that without offence to his Maiestie.

Thirdly, if any should chance of that lower house to offend, or not to do or say as should become him, or if any should offend any of them being called to that his Highnesse Court, that they themselues might
(according

(according to the ancient custome) haue the parillament of them. And fourthly, that if there come any doubt, whereupon they shall desire to haue the aduise or conference with his Majestie, or with any of the Lords, they might doe it: all which hee promiseth in the Commons names, that they shall not abuse, but haue such regard as most faithfull, true, and louing Subjects ought to haue to their Prince.

The Chancellour answereth in the Princes name, as appertaineth. And this is all that is done for one day, and sometime for two. Besides the Chancellour, there is one in the vpper House, who is called Clarke of the Parliament, who readeth the Bills. For all that commeth in consultation either in the vpper House or in the neather house, is put in writing first in paper, which being once read, he that will riseth vp and speaketh with it or against it: and so one after another so long as they shall thinke good. That
done

done, they goe to another, and so another Bill. After it hath beene once or twice read, and doth appeare that it is somewhat liked as reasonable, with such amendment in words, and peradventure some sentences, as by disputation seemeth to be amended: in the vpper House the Chancellour asketh if they will haue it ingrossed, that is to say, put into parchment: which done, and read the third time, and that estoones, if any bee disposed to object, disputed againe among them, the Chancellour asketh if they will goe to the question: and if they agree to goe to the question, then he saith, here is such a Law or Act concerning such a matter, which hath beene thrise read heere in this House, are yee content that it be enacted or no? If the not contents be moe, then the Bill is dashed, that is to say, the Law is annihilated, and goeth no farther. If the contents bee the moe, then the Clarke writeth vnderneath: *Soit*
passer.

baille aux commons. And so when they see time, they send such Bills as they haue approued, by two or three of those which doe sit on the Wool-sacks to the Commons: who asking licence and comming into the House, with due reuerence, saith to the Speaker: Master Speaker my Lords of the vpper House haue passed among them and think good, that there should be enacted by Parliament such an Act, and such an Act, and so readeth the titles of that Act or Acts. They pray you to consider of them, and shew them your aduise, which done they goe their way. They being gone, and the doore againe shut, the Speaker rehearseth to the House what they said. And if they be not busie disputing at that time another Bill, hee asketh them straight way if they will haue that Bill, or (if there be moe) one of them.

In like manner in the lower House the Speaker sitting in a seate or chaire for that purpose
some-

somewhat higher, that he may see and be scene of them all, hath before him, in a lower seat his Clark, who readeth such Bills as bee first propounded in the lower house, or be sent downe from the Lords. For in that point each house hath equal authoritie, to propound what they thinke meete, either for the abrogating of some Law made before, or for making of a new. All Bills bethrice in three diuers dayes read and disputed vpon, before they come to the question. In the disputing is a maruellous good order vsed in the lower House. Hee that standeth vp bare-headed, is to bee vnderstood, that hee will speake to the Bill. If moe stand vp, who that is first judged to arise, is first heard, though the one doe praise the Law, the other diswade it, yet there is no alteration. For euery man speaketh as to the Speaker, not as one to another, for that is against the order of the House. It is also taken against the order, to name him
whom

whom yee doe confute, but by circumlocution, as hee that speaketh with the Bill, or hee that spake against the Bill, and gaue this and this reason. And so with perpetuall Oration not with altercation, hee goeth through till he haue made an end. Hee that once hath spoken in a Bill, though hee bee confuted straight, that day may not reply, no though he would change his opinion. So that to one Bill in one day one may not in that house speake twise, for else one or two with altercation would spend all the time. The next day he may, but then also but once.

No reuiling or nipping wordes must be vsed. For then all the house will cry, it is against the order: and if any speake vnreuerently or seditiously against the Prince or the priuy Counsel, I haue seenethem not onely interrupted, but it hath been moued after to the House, and they haue sent them to the Tower. So that in such a multitude and in such
di-

diuerſitie of minds, and opinions, there is the greateſt modeſty and temperance of ſpeech that can be vſed. Neuertheleſſe, with much doulce and gentle termes, they make their reaſons as violent and as vehement the one againſt the other as they may ordinarily, except it be for vrgent cauſes, and haſting of time. At the afternoone they keepe no Parliament. The ſpeaker hath no voice in the houſe, nor they will not ſuffer him to ſpeake in any Bill to mooue or diſſwade it. But when any Bill is read, the Speakers Office is, as briefly and as plainly as he may, to declare the effect thereof to the Houſe. If the Commons doe aſſent to ſuch Bills as bee ſent to them firſt agreed vpon from the Lords thus ſubſcribed, *Les communs ont aſſentus*, ſo if the Lords doe agree to ſuch Bills as be firſt agreed vpon by the Commons, they ſend them downe to the Speaker thus ſubſcribed, *Les Seigneurs ont aſſentus*, If they

they cannot agree, the two Houses (for every Bill from whence sooner it doth come, is thrise read in each of the Houses) if it be understood that there is any sticking, sometimes the Lords to the Commons, sometime the Commons to the Lords do require that a certain of each house may meet together, & so each part to be informed of others meaning, and this is alwayes granted. After which meeting for the most part, not alwayes, either part agrees to others Bills.

In the vpper house they giue their assent and dissent each man severally and by himselfe, first, for himselfe, and then, for so many as hee hath proxie. When the Chancelour hath demanded of them, whether they will goe to the question after the Bill hath been thrise read, they saying only, content or not content, without further reasoning or replying: and as the more number doth agree, so it is agreed on, or dashed.

In

In the neather House none of them that is elected, either Knight or Burgesse can giue his voiceto another, nor his consent or dissent by proxie. The more part of them that bee present only maketh the consent or dissent. After the Bill hath beenetwice read, and then ingrossed, and eft-soones read and disputed on enough as is thought, the Speaker asketh if they will goe to the question : And if they agree, hee holdeth the Bill vp in his hand and saith : As many as will haue this Bill go forward, which is concerning such a matter, say yea. Then they which allow the Bil cry yea, and as many as will not, say no : as the cry of yea or no is bigger, so the Bil is allowed or dashed. If it be a doubt which cry is bigger, they diuide the House, the Speaker saying, as many as doe allow the Bill goe downe with the Bill, and as many as do not, sit still. So they diuide themselues, and being so diuided they are numbred
who

who made the more part, and so the Bill doth speed. It chanceth sometime that some part of the Bill is allowed, some other part hath much controuersie and doubt made of it: and it is thought if it were amended it would goe forward. Then they choose certaine *Committees* of them who haue spoken with the Bill and against it, to amend it, and bring it againe so amended, as they amongst them shal thinke meet: and this is before it is ingrossed, yea and sometime after. But the agreement of these *Committees* is no prejudice to the house. For at the last question they will either accept it or dash it, as it shall seeme good, notwithstanding that whatsoeuer the *Committees* haue done.

Thus no Bill is an Act of Parliament, Ordinance, or Edict of Law, vntill both the Houses severally haue agreed vnto it after the order afore said, no nor then neither. But the last day of that Par-

liament or Session of the Prince commeth in person in his Parliament Robes and sitteth in his state : all the vpper House sitteth about the Prince in their states and order in their Robes. The Speaker with all the common House commeth to the Barre, and thereafter thanksgiuing first in the Lords name by the Chancellour, &c. And in the Commons name by the Speaker to the Prince, for that he hath so great care of the good gouernment of his people, and for calling them together to aduise of such things as should bee for the reformation, establishing, and ornament of the Common-wealth : the Chancellour in the Princes name giueth thanks to the Lords and Commons for their paines and trauels taken, which hee saith the Prince will remember and recompence when time and occasion shal serue, and that hee for his part is ready to declare his pleasure concerning their proceedings, whereby the
same

same may haue perfect life and accomplishment by his Princely authoritie, & so haue the whole consent of the Realme. Then one reads the titles of euery Act which hath passed at that Session, but onely in this fashion: An Act concerning such a thing, &c. It is marked there what the Prince doth allow, and to such hee saith: *Le Roy, or la Royne le veut*. And those be taken now as perfect Lawes and Ordinances of the Realme of England and none other, and as shortly as may bee put in print, except it bee some priuate cause or Law made for the benefit or prejudice of some priuate man, which the Romanes were wont to call *privilegia*. These bee onely exemplified vnder the Seale of the Parliament, and for the most part not printed. To those which the Prince liketh not, he answereth, *Le Roy, or la Rayne s'aduisera*, and those be accounted vterly dashed and of none effect.

This is the order and forme of
the

the highest and most authentically Court of England, by vertue whereof all these things be established whereof I spake before, and no other meanes accounted auailable to make any new forfeiture of life, member, or lands of any English man, where there was no Law ordained for it before. Now let vs speake of the said parts when they be seuerall.

CHAP. IV.

Of the Monarch, King, or Queene of England.

THE Prince whom I now call (as I haue often before) the Monarch of England, King, or Queene, hath absolutely in his power the authority of warre and peace, to desie what Prince it shall please him, and to bid him warre, and again to reconcile himselfe and enter into league or truce with him at his pleasure, or the aduise
onely

onely of his priuy Counsell. His priuy Counsell are chosen all at the Princes pleasure out of the Nobilitie or Baronie, and of the Knights, and Esquires such and so many as he shall thinke good, who doe consult daily, or when need is, of the waighty matters of the Realme to giue therein to their Prince their best aduise they can. The Prince doth participate to them all, or so many of them as hee shall thinke good, such legations and messages as come from forraigne Princes, such letters or occurrents as be sent to himselfe or to his Secretaries, and keepeth so many ambassages and letters sent vnto him secret as he will, although these haue a particular oath of a Counsellour touching faith and secrets administred vnto them when they bee first admitted into that company. So that herein the Kingdome of England is farre more absolute then either the Dukedome of Venice is, or the Kingdome of the Lacedemo-

nians was. In warre time, and in the field the Prince hath also absolute power, so that his word is a law, he may put to death, or to other bodily punishment, whom he shall thinke so to deserue, without proceffe of law or forme of iudgement. This hath beene sometime vsed within the Realme before any open warre, in suddaine insurrections and rebellions, but that not allowed of wise and graue men, who in that their iudgement had consideration of the consequence and example, as much as of the present necessitie, especially when by any meanes the punishment might haue beene done by order of law. This absolute power is called martiall law, and euer was, and necessarily must bee vsed in all Camps and Hosts of men, where the time nor place doe suffer the tarriance of pleading and proceffe be it neuer so short, and the important necessity requireth speedie execution, that with more awe the Souldier might bee kept in more

straight obedience, without which
neuer Captaine can doe any thing
waileable in the warres.

The Prince vseth also absolute
power in crying and decreeing the
money of the Realme by his Pro-
clamation onely. The money is
alwayes stamped with the Princes
image and title. The forme, fashi-
on, manner, weight, finenesse and
basenesse thereof, is at the discreti-
on of the Prince. For whom should
the people trust more in that mat-
ter than their Prince, seeing the
coine is only to certifie the good-
nesse of the metall and the waight,
which is affirmed by the Princes
image and marke? But if the Prince
will deceiue the, & giue them cop-
per for siluer or gold, or inhance his
coine more then it is worth, hee is
deceiued by his subjects. For in the
same sort they pay the Prince his
rents and customes. And in time
they will make him pay ratibly or
more for meat, drinke, and victu-
als for him and his, and for their

labour which experience doth teach vs now in our dayes to bee done in all Regions. For there euer hath beene and euer will be a certaine proportion betweene the scarcitie & plenty of other things, with Gold and Silver. For all other measures and waights, as well of dry things as of wet, they haue accustomed to be established or altered by the Parliament, and not the Princes Proclamation onely.

The Prince vseth also to dispence with Lawes made, whereas equity requireth a moderation to be had, and with paines for transgressing of Lawes, where the paine of the Law is applied onely to the Prince. But where the forfeite (as in popular actions it chanceth many times) is part to the Prince, the other part to the Declarator, Detector or Informer, there the Prince doth dispence for his owne part onely. Where the criminall action is intended by inquisition (that manner is called with vs [at the Prin-

ces fute) the Prince giueth absolu-
tion or pardon, yet with a clause,
modo stet recte in curia, that is to
say, that no man object against the
Offendor. Whereby notwithstanding
that he hath the Princes par-
don if the person offended will take
vpon him the accusation (which in
our language is called the appeale)
in cases where it lieth, the Princes
pardon doth not serue the offen-
der.

The Prince giueth all the chiefe
and highest Offices or Magistra-
cies of the Realme, be it of judge-
ment or Dignitie, Temporall or
Spirituell, and hath the tenths and
first fruits of all Ecclesiastical pro-
motions, except in the Vniuersi-
ties, and certaine Colledges, which
be exempt.

All Writs, Executions, and
Commandements, bee done in the
Princes name. Wee doe say in
England, the life and member of
the Kings subiect are the Kings on-
ly, that is to say, no man hath

hault nor *moyenne* justice but the King, nor can hold plea thereof. And therefore all those pleas which touch the life or mutilation of man be called pleas of the Crowne, nor can be done in the name of any inferiour person than he or shee that holdeth the Crowne of England. And likewise no man can giue pardon thereof but the Prince onely: although in times past there were certaine Countie Palatines, as Chester, Durham, and Elie, which were *hault* Iusticers, and Writs went in their Name, as also some Lord Marches of Wales, which claimed like priuiledge: all these are now worne away. The supreme justice is done in the Kings Name, and by his authoritie onely.

The Prince hath the wardship and first mariage of all those that hold land of him in chiefe. And also the gouernment of all Fooles naturall, or such as be made by aduenture of sicknesse, and so con-

tinu e

time, if they be landed. This being once grounded by Act of Parliament (although some inconvenience hath beene thought to grow thereof, and since that time it hath beene thought very vnreasonable) yet once annexed to the Crowne, who ought to goe about to take the club out of *Hercules* hand? And being gouerned justly and rightly, I see not so much inconvenience in it, as some men would make of it: diuers other rights and preheminences the Prince hath, which be called prerogatiues royals, or the prerogatiue of the King, which be declared particularly in the bookes of the common Lawes of England:

To bee short, the Prince is the life, the head, and the authoritie of all things that bee done in the Realme of England. And to no Prince is done more honour and reuerence, then to the King and Queene of England: no man speaketh to the Prince, nor serueth at

the table, but in adoration and kneeling, all persons of the Realme be bare headed before him: in so much that in the Chamber of Presence where the cloath of Estate is set, no man dare walke, yea though the Prince be not there, no man dare tarry there but bare headed. This is vnderstood of the Subjects of the Realme, for all Strangers bee suffered there and in all places to vse the manner of their Country, such is the ciuilitie of our Nation.

CHAP. V.

The chiefe points wherein one Common-wealth doth differ from another.

NOW that wee haue spoken of the Parliament (which is the whole, vniuersall, and generall consent and authoritie aswell of the Prince, as of the Nobilitie and Commons, that is to say, of the whole

whole head and bodie of the Realme of England) and also of the Prince , (which is the Head, Life and Gouvernour of this Common-wealth) there remayneth to shew , how this Head doth distribute his authoritie and power to the rest of the members for the government of his Realme, and Common-wealth of the politicke bodie of England.

And whereas all Common-wealths and Gouvernements bee most occupied, and be most diuers in the fashion of five things : In making of Lawes and Ordinances, for their owne government: in making of battell and peace , or truce with forraine Nations, in providing of money for the maintenance of themselves, and defence of themselves against their enemies, in choosing and election of the chiefe Officers and Magistrates : and fiftly, in the administration of justice. The first and third we haue shewed is done by the Prince in

Parliament. The second & fourth,
by the Prince himselfe : the fifth
remayneth to be declared.

CHAP. VI.

*Of three manners and formes of
tryals or iudgements in England.*

BY order and vsage of England,
there be three waies and man-
ners, whereby absolute and defi-
nite iudgement is giuen, by Par-
liament, which is the highest and
most absolute, by battle, and
by the great Assise.

CHAP. VII.

*Tryall, or iudgement by
Parliament.*

THE manner of giuing iudge-
ment by Parliament between
priuate and priuate men, or be-
tweene the Prince and any priuate
men, be it in matters Criminall or
Ciuill,

Ciuill, for land or for heritage, doth not differ from the order which I haue prescribed, but it proceedeth by bill thrise read in each house, and assented to as I haue said before, and at the last day confirmed and allowed by the Prince, howbeit such bills be seldom receiued, because that great counsell being enough occupied with the publike affaires of the Realme, will not gladly intermeddle it selfe with priuate quarrels and questions.

CHAP. VIII.

*The tryall of iudgement by
battaile. vide l. 3.*

c. 3. p. 220. & seqq.

THis is at this time not much vsed, partly because of long time the Pope and the Clergie, to whom in time past we were much subject, alwayes cried against it as a thing damnable and vnlawfull: and partly because in al Common-
wealhs,

wealthes, as to the tongue, so to the manners, fashions, habits, yea and kinds of trials & judgements, and to all other things that is therein vsed, time and space of yeares bringeth a change. But I could not yet learne that it was euer abrogated. So that it remaineth in force, whensoever it be demanded. The manner of it is described in *Britton*.

CHAP. IX.

*The tryall by Assise or twelue men,
and first of the three parts which
be necessary in iudgement.*

THE two first judgements bee absolute, supream and without appeale, and so is also the judgement by the great Assise. And the cause or manner of judgements in England is in many things different from the fashion vsed either in France or in Italy, or in any other

other place. If the Emperors lawes and constitutions (called the ciuill lawes) be put in vse, it will bee necessary here to make a little digression, to the intent that that which shall be said hereafter, may bee better vnderstood. All purposes and actions (wee call them in our English tongue pleas) and in barbarous (but now vsuall Latine) *placita*, taking that name, *abusine* of the definitiue sentence, which may well bee called *placitum*, or *ἀγέρον*, The French vsed the same, called in their language, the sentence of their iudges *areste*, or *arest*, in which words notwithstanding after their custome they doe not sound the *s*. But wee call *placitum*, the action, not the sentence, and *placitare* barbarously, for to plead in English, *agere*, or *litigare*. Now in all iudgements being two parties, the first wee call the impleader, suiter, demander, or demandant, and plaintife. In criminall causes, if hee professe to bee

an accuser, we call him appellant, or appelour; and so, accusation we call appeale. The other wee call the defendant, and in criminall causes, prisoner, for hee cannot answer, in causes criminall, before hee doe render himselfe, or be rendered prisoner.

Index, is of vs called Iudge, but our fashion is so diuers, that they which giue the deadly stroke, and either condemne or acquite the man for guiltie or not guiltie, are not called Iudges, but the twelve men. And the same order aswell in ciuill matters and pecuniarie, as in matters criminall.

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12.

CHAP. X.

Of Pleas or Actions.

PLeas or actions criminall, 'bee in English called 'pleas of the Crowne which be all those which tend to take away a mans life or any member of him, for his euill deserving

seruing against the Prince and
Common-wealth.

And this name is giuen not
without a cause. For taking this
for a principle, that the life and
member of; an Englishman is in
the power onely of the Prince and
his lawes, when any of his subjects
is spoyled either of life or member,
the Prince is endamaged thereby,
and hath good cause to aske ac-
count how his subiects should
come to that mischiefe. And a-
gaine, for so much as the Prince
who gouerneth the Scepter, and
holdeth the Crowne of England
hath this in his care and charge,
to see the Realme well gouerned,
the life, members, and possessions
of his subiects kept in peace and as-
surance: he that by violence shall
attempt to break that peace & assu-
rance, hath forfeited against the
Scepter and Crowne of England:
and therefore not without a cause
in all inquisitions and inditements,
if any bee found by the twelue men

Sauing in
appeales, &c.
vpon a spe-
ciall plea,
Actio, is the
parties
whole suite:
Breue is the
Kings pre-
cept.

to haue offended in that behalfe, straight the Prince is said to bee partie, and he that shall speake for the prisoner shall bee rebuked, as speaking against the Prince. Neuerthelesse, it is neuer forbidden, but the prisoner, and partie defendant, in any cause may alleadge for him al the reasons, meanes, and defences that he can, and shall bee peaceably heard and quietly. But in those pleas and pursuites of the Crowne, Procuror or Aduocate he gets none, which in ciuill and pecuniary matters (bee it for land, rent, right, or possession, although hee plead against the Prince himselfe) he is neuer denied.

Pleas ciuill bee either personall or reall: personall, as contracts or for iniuries: reall, bee either possessorie, to aske, or to keepe the possession, or in *rem*, which we call a writ of right. For that which in the ciuill law is called *actio* or *formula*, we call writte in English, so the Greekes called it. word for word.

word *γραφη* and in our barbarous Latine wee name it *brevé*.

And as the olde Romans had their actions some *ex iure civili* and some *ex iure pratorio*, and ordinarily *prator dabat actiones*, & *formulas actionum*: so in England we retaine still this, and haue some writtes out of the Chancerie, other out of the common pleas or the Kings bench,

CHAP. XI.

*Of the chiefe Tribunalls, Benches,
or Courts of England.*

IN times past (as may appeare to him that shall with iudgement read the Histories and antiquities of England) the Courts and Benches followed the King and his Court wheresoeuer he went, especially shortly after the conquest. Which thing being found very combersome, painfull, and chargeable to the people, it was agreed by

by Parliament, that there should be a standing place where iudgement should be giuen. And it hath long time beene vsed in Westminster hall which King *William Rufus* builded for the Hall of his owne house. In that Hall be ordinarily seene three Tribunals, or Iudges seates. At the entry on the right hand the common pleas where ciuill matters are to be pleaded, specially such as touch lands or contracts. At the vpper end of the Hall on the right hand, the Kings Bench where pleas of the Crowne haue their place. And on the left hand sitteth the Chancellor accompanied with the Master of the Rolls, who in Lattine may bee called *custos archinorum Regis*, and certaine men learned in the Ciuill Law, called Masters of the Chancerie, in Latine they may bee called *Assessores*.

CHAP. XII.

*Of the times of pleading called
Termes: and of the Chancellour
and Chancerie.*

Two things may bee moued
in question heere, how all
England (being so long and so
large, and hauing so many shires
and prouinces therein) can be an-
swered of iustice in one place, and
in three benches, be they neuer so
great? Another (whereas the Kings
bench is exercised in criminall
causes, & in all pleas of the crown,
and the common place in all ciuill
causes, (reall, and personall) what
place then hath the Chancerie?

The first question will seeme
more meruailous, and haue
more occasion of doubt, when I
shall also tell that the Law is ^{not} open
at all times, no, not the third part
of the yeare. But where all other
cities and common wealths had
all the yeare pleas, suites and iudg-
ments, except for certaine holy-
dayes, and haruest, and vintage,

or when for some vrgent cause the Law was commanded to bee stop-
ped, which is called *Institium*:
contrarie in ours it is but few times
open. That is onely foure times in
the yeare, which they call *Termes*:
After Michaelmas about tenne
dayes, during five or sixe weekes
at the least. After Christmas about
a moneth enduring by the space of
three weekes. Then from 17. dayes
after Easter by the space of three
weekes and odde dayes. Like-
wise from the fixe or seauenth day
after Trinitie Sunday, during two
weekes and odde dayes. All the
rest of the yeare there is no plea-
ding, entring, nor pursuing of
actions. This small time, and all
that but in one place, may seeme
very iniurious to the people, who
must be faine to suffer much wrong
for lacke of Iustice, and of place
and time to pleade: but vnto that
heereafter I intend to answere
more fully, and at large, and
in the meane while that shall
* vide cap. 20. & seqq. suffice

suffice which the wise *Cato* answered to one who moued, that the pleading place in Rome might be couered ouer with canuasse, as their Theaters were, to the intent that the Plaintiffes and defendants that were there might pleade their matters more at ease, and not bee in so much danger of their health by the heate of the Sunne striking ful & open vpon their heads, which was no small griefe and disease specially at Rome. Nay (saith *Cato*) for my part I had rather wish that all the wayes to the place of pleading were cast ouer with Galthrops, that the feete of such as loue so well pleading, should feele so much paine of those pricks in going thither, as their heads doe of the Sunne in tarrying there: hee meant that they were but idle, hot heads, busie-bodies, and troublesome men in the Common-wealth that did so nourish pleading: good labourers and quiet men could bee content to ende their matters at home

home by iudgment of their neighbours and kinsfolke, without spending for their money vpo Procurers and Aduocates whom we call Attorneys, Counsellors, Sergeants, and generally men of Law. Those be accounted profitable Citizens who attend their honest labour and busines at home, and stand not waiting and gaping vpon their Roles, and Proësses in the Law: as for the other, by his iudgement, it was no matter what mischief they suffered. To the other question of the Chancerie, this I answered: That our law which is called of vs the common law, as yee would say *Ius civile*, is, and standeth vpon *æquitas*, that is *Ius summum*: and their maxims be taken so straightly, that they may not depart from the tenour of the words, euen as the old ciuill Law was. And therefore as that lacked the helpe of *Prætor* (which might *moderari illud ius summum*, giue actions where none was, mitigate the

the exactnesse and rigour of the law written, giue exceptions as *metus, doli mali, minoris etatis, &c.* for remedies, and maintaine alwayes *aquum bonum*:) the same order and rancke holdeth our Chancerie, & the Chancelor hath the very authoritie herein as had the *Prator* in the old ciuill Law before the time of the Emperours. So hee that putteth vp his bill in the Chancerie, after that hee hath declared the mischiefe wherein he is, hath reliefe as in the solempne *Forum*. And for as much as in this case he is without remedie in the common Law, therefore he requirereth the Chancelour according to equitie and reason to prouide for him and to take such order as to good conscience shall appertaine. And the Court of the Chancerie is called of the common people the Court of Conscience, because that the Chancellor is not strained by rigor or forme of words of Law to iudge, but *ex aqno* and
bona

bono and according to conscience as I haue said. And in this Court the vsuall and proper forme of pleading of England is not vsed, but the forme of pleading by writing, which is vsed in other Countries according to the ciuill Law: and the trial is not by twelue men, but by the examination of witnesse as in other Courts of the ciuill Law.

Out of this Court, as from the person of the Prince come all manner of originall Writs. The declaration of writs is at large set downe in the register of writs and in the *Natura breuium*. Out of this Court come most commonly Commissions, Patents, Licences, Inquisitions, &c.

The Iudges of this Court are the Lord Chancelour of England, assistants, the Master of the Rolls, and six Masters of the Chancerie, which are commonly Doctors of the Ciuill Law.

Officers are the six Clerks of the Chancerie;

Chancerie, the Clarke of the Crowne generall, the Register, Controller of the Seale, two examiners, the Clarke of the Hamper, the three Clarkes of the Petty bag, the Curfitters, the Sergeant of the Mace,

The Lord Chancelor is the keeper of the great Scale, and hath it carried with him wheresoeuer he goeth.

The Master of the Rolls is the keeper of the Records, Iudgments, and sentences giuen in the Court of Chancerie.

The six Masters are assistants to the Court, to shew what is the equitie of the ciuill Law, and what is Conscience.

The Clarke of the Crowne is the chiefe Guardian of the matters of the Crowne: what are Crowne matters, and pleas of the Crowne, see in the learned Booke of *Stanford* called the *Pleas of the Crowne*.

The six Clarks are the attornies,

as well for the Plantiffe, as Defendant, in euery suite in the Court.

The Register is the engrosser and keeper of the decrees, publications, orders, and iniunctions issuing out of this Court.

The two examiners are such as take the examination of the witnesses brought to proue or reprove any thing in suite in this Court, and to put their depositions and answers made to their interrogatories in writing.

The Controller of the Seale is to see and allow of all the Writs made in this Court.

The Clarke of the Hamper is he that doth receiue the fines due for euerie Writ sealed in this Court.

The three Clarkes of the Pettie bag, are they that receiue the Offices that are found in the Court of wards.

The Cursiters are Clarkes appointed to their seuerall shires which

which doe write originall writs that belong to this court or the common place.

The Sergeant carrieth the Mace before the Lord chancelor, and is to call any man before him at his commandement.

The Proceffe in the chancerie is a *Sub pœna*, which is but to call the partie before him vpon a paine, as vpon paine of xl.li &c. And this is the way vsed to bring in the party, or else by the Sergeant as before.

The punishment is, if the partie will not come in, or comming in, will not obey the order of the court, imprisonment during the pleasure of the Lord Chancelor.

The order of proceeding is by Iniunctions, Decrees, and orders which are to binde the partie, and if hee resist, his punishment is imprisonment.

The matter in this court are all causes wherein equitie, and

extremities of Law doe striue, and where the rigour of Lawes haue no remedie, conscience and the moderation of *Summum ius* hath sufficient.

And here is to be noted, that conscience is so regarded in this court, that the Lawes are not neglected, but they must both ioyne and meete in a third, that is a moderation of extremities.

This court is called of some *Officina Iuris Civilis Anglorum*, because out of this court issue all manner of Proceffe which giue the partie his cause of action in other courts.

CHAP. XIII.

Of Iudges in the Common Law of England, and the manner of trial and pleading there.

THe Prince out of the numbers of those who haue bin Counsellours or Sergeants at the Law, which be those who in Latine are called *causidici* or *aduocati*, chooseth two of the most approued for learning, age, discretion, and exercise, of whom the one is called Chiefe Iustice of the Kings Bench, or simply Chiefe Iustice, the other of the Common Place, and others to the number of sixe or more, which haue each an ordinarie fee or stipend of the Prince.

These doe sit at such dayes as be terme, which may be called *Dies legitimi iudicii*, or *fasti*, in their distinct places as I haue said before. There they heare the pleading of all matters which do come before them: and in ciuill matters

where the pleading is for Monie,
 or Land, or Possession, part by
 Writing, and part by Declarati-
 on and Altercation of the Aduo-
 cates the one with the other, it
 doth so proceed before them till it
 doe come to the issue, which the
 Latines doe call *stamm cause*, I
 do not meane *contestationem litis*,
 but as the Rhetoritians do call *sta-*
tum, wee doe most properly call it
 the issue, for there is the place
 where the debate and strife remain-
 neth (as a water held in a close and
 darke vessell issueth out, and is
 voided and emptied) and no where
 else: that stroke well stricken is
 the departing of all the Quar-
 rels, Issues or *status* in our
 Law bee ordinarily
 two, *facti* and
juris.

CHAP. XIV.

Of the Kings Bench.

THe Kings Bench is the Kings Court, so called because usually the Kings have sitten there, and also because that therein all causes are handled which appertain to the Crowne : and such causes as wherein the King or Queene is a party, if they properly appertain not to some other Court.

The Iudges of the Kings Bench are the Lord Chiefe Iustice of England with other his Companions assistant in giuing judgement.

The Sergeants and Counsellors doe debate the cause.

The sentence is giuen by the Chiefe Iustice, the others all or the most part assenting, as it shall appeare to bee in other Courts likewise. If they cannot agree, then is the matter referred to a demurre in the Exchequer Chamber before all

the Iustices of both the Benches, viz. the Kings Bench, and the Common Pleas, and the Lord Chiefe Baron of the Exchequer.

The Officers in the Kings Bench, are the chiefe Prothonothary, the Secondary, the Clarke of the Crowne, the Clarke of the Exigents, the Clarke of the Papers, the Custos Breuium, and Custos Sigilli.

The Prothonothary is he, that recordeth all Iudgements, Orders, and Rules in this Court, and all Verdicts giuen, being not of Crowne matters.

The Secondary is the Prothonotharies Deputie, for the said causes, and he is the keeper and maker vp of these Records in Bookes.

The Clarke of the Crowne, is to frame all Indictments of Felonie, Treason, Murther, &c. all manner of Appelles, and after to record them and enter the Verdict, and to make and keepe the Records touching these matters.

The

The Clarke of the Exigents is to frame all manner of Processes of *Exigi facias*, which doe issue out of that Court to out-law any man, and to record the out-lawrie.

The Clarke of the Papers is he that keepeth all Rols, Scripts, and pleadings, and other things in writing which are not of Record.

The Custos Breuium is he which fileth all the Writs Iudiciall and Originall, after the Sheriffe hath returned them, he is chargeable if any bee embeseled or priuily conveyed away from the file.

The Custos Sigilli is he that doth keepe the Scale, and seeketh all iudiciall Writs and all Patents, Licences issuing out of this Court, and taketh the fee due for them, and thereof to make his account.

There are certaine Attornies belonging to this Court in number as the Prothonothary shall appoint: those are for Plaintiffes and Defendants in euery cause, and they frame and make the pleadings.

The manner of proceeding in this Court is by *Latitat*, Arrest, and Bill.

The *Latitat* is to bring the party in, when he is not to be found, or will not appeare and answere.

Arrest is when the partie is arrested, and then is driuen to finde baile, *viz.* two sufficient sureties or more as the case shall need.

By Bill the Suite is when the party is in *Custodia Mareschalli*, and from thence brought to answere.

The matters in this Court are properly all matters of the Crown, whereof see *Standfords Booke* aforesaid.

In these they proceed by *Indictments*, *Verdict*, *Appeale*, improperly all suites wherein the King is a party, or haue any losse. Such are *Conspiracies*, *Cham-parties*, *Imbrafier*, *Maintenance*, *Decies tantum maymes*, *Slanders*, *Actions sur le cas*: of these see *Natura Breuium*.

CHAP. XV.

Of the Court of Common Pleas.

THe Court of Common Pleas is the Kings Court, wherein are holden all common pleas betwene Subject and Subject, of all matters of common Law: so called, for that it serueth for the exact and precise administration of the common Law.

The Iudges in this Court are, the Lord Chiefe Iustice of the Common Pleas, three other his Associates. The Sergeants at the Law whose number is sometimes more, sometimes lesse, at the pleasure of the Prince. These all are sworne to serue the turne of the common Law at this Barre.

Two of them are alwayes appointed to serue the Princes turne in what Court soeuer, and are called the Kings Sergeants.

The Officers of this Court are the Custos Breuium, three Prothonotaries,

notharies, the Clarke of the Warrants, the Clarke of the Effoynes, diuers Atturnies, Fillifers for euery Shire, the Clarke of the Inuries, the Cirographer for fines, the Clarke of the Kings siluer for errors in this Court committed, the Clarke of the Seale, as before for the Kings Bench.

The Custos Breuium is the chiefe Clarke in the Court, and hee hath the custodie of all the Writtes whatsoeuer returnable into this court, come they either at the day of the returne, or after the day which is called *post diem*.

The Prothonotaries are they which after the parties haue appeared in court, doe enter the matters in suite, and make the pleadings, and enter them.

The Fillifers are they which make vp all meane processe vpon the originall Writtes, and the same Writs returned by the Sheriffe, are by the Atturnies deliuered to the custos Breuium to file or string

aring, there to remayne of Record.

The Exigenters are such as make out the Exigents and Writs of Proclamation to euery countie, where the parties are, that vpon thesame Processe or Summons wil not appeare.

The clarke of the Warrants is he which doth take the Warrants of an Atturney, which shall prosecute for the Plaintife or Defendant: and is hee that enrolleth all deeds acknowledged before the Iustices of thesame court.

The clarke of the Essoynes, is he which doth essoyne the Defendants in euery Action, before the day of his appearance.

Any Essoyne is an ordinary delay by Office of court in action: and the Officer before whom the clarke is to take the Essoyne, is the puny Iustice in the common pleas, who for that purpose, sitteth three dayes before the Tearme.

The common Atturneys are such

as are allowed in this court, by the Lord chiefe Iustice of the common Pleas, and his Assistants to prosecute or defend according to the instructions of their Clients for the Plaintife or Defendant.

The clarke of the Iuries is hee that doth make the *Venire Facias*, to the Sheriffe to warne the Iuries by.

The cirographer is he that hath the Writ of couenant with the concord brought vnto him, and he maketh the Indenture tripartite, whereof two are deliuered to the partie for whose vse the fine is acknowledged. And the third part is reserued with him. And all the Proclamations of the same fine according to the Statutes made, are endorsed on the third part remaying, and it is commonly called the foot of the fine.

The clarke of the Kings Siluer is a distinct Office of the fines, and is he who setteth downe the money that his Majestie is to haue for the fine,

fine, according to the yeerely value of the Land confessed, knowne deposed, or agreed vpon.

All Errours in this court committed, are reformed in the Kings Bench, before the Lord chiefe Iustice, and other Iustices there assistant by Writ of Errour.

There is also the clarke of the Out-lawries, who is the Kings Atturnie Generall, and hee entreteth the Out-lawry for the King, after the Exigent deliuered: and he maketh all the Writs of Out-lawry: and none are to bee made but by him.

The matters of the common Pleas, are all suites of common Law commenced by any Writ originall, reall, or personall.

Reall are such as touch the inheritance, or fee of any man.

Personall are such as touch transitory things, as goods, chattels, personall wrongs, &c.

The difference betweene a Writ Originall, and a Writ Iudiciall, is
this:

this: the originall faith in the end of it (in the person of the King or Queene) *teste me ipso*, or *me ipsa*, *apud Westmonasterium*. The judiciall Writ faith in the end, *Teste Christophoro Wray*, or *Teste Iacobo Dier*, or such other as shall be the Lord Chiefe Iustice of either of those Benches.

The order of proceffe how they follow the one after the other. In this Court is first a *Summoneas* in some action, then *Attachias*, but in most a *Capias*, then a *Capias pluries*, then *Exigi facias*, and a Proclamation into the Countie where the Defendant dwelleth.

The *Summoneas* is the originall, and goeth out of the Chancerie, and is directed to the Sheriffe, to bring the partie by a day.

The Sheriffes order in serving this Writ, is to goe himselfe, or his Bayliffe, to the Land, and there to garnish the partie, by sticking vp a Ricke on his Land, which done, the Sheriffe returneth two com-
mon

mon pledges, *Iohannes Do*, and *Richardus Ro*, and two *Summonees*, *Richardus Den*, *Henricus Fen*. After the *Summonees*, if the partie come not in, issueth out an *Attacheas* in nature of a precept, to authorize the Sheriffe to goe to his Land or House, and there to take a pledge for his appearance.

But if the partie Plaintiffe meane to out-law the Defendant, he getteth a *Summoneas* out of the Chancerie to the Sheriffe to warne the partie, who returneth *nihil habet*, &c. Then the Plaintiffe getteth a *Capias* to take his bodie, and then an *Alias Capias*, then a *Pluries Capias*, to all which the Sheriffe returneth in order as they bee giuen out, *non est inuentus*, after which if the Partie appeare not, goeth out to the Sheriffe the *Exigi facias*, and a Proclamation to proclaime the partie in fiue seuerall Countie dayes: after which Proclamatione,

ons, if hee doe not appeare, hee is returned *Quinto exactus*, & *non comparuit* & *ideo vilegatus*, vnlesse hee doe first purchase a *Supersedeas*, to the Court to surcease. The *Supersedeas* is granted at the suite of the Defendant, to stay the Outlawrie, and is an apparance to the Suite for the Defendant, suggesting to the Court, that his Exigent *improvide emanauit* shewing that the Defendant was alwayes readie to appeare by his Attorney. This done, the Plaintiffe declareth, the Defendant answereth, if the answer bee issuable they proceed to tryall.

The manner of proceeding is either to joyne issue, and so to passe to Verdict, or else to Demurre. The tryall is by Verdict, when the question is made *de facto*, as where the matter was done, when, by whom, &c.

CHAP. XVI.

Of the two manner of issues.

IF the question bee of the Law,
that is, if both the parties doe
agree vpon fact, and each doe
clayme that by Law hee ought to
haue it, and will still in that sort
mayntaine their right, then it
was called a Demurrer in Law,
where if in the Law the Case
seeme to the Iudges that sit doubt-
full, it is called a Checker Cham-
ber Case, and all the Iudges will
meete together, and what they
shall pronounce to bee the Law,
that is held for right, and the o-
ther partie looseth his Action or
Land for euer. If the Sergeants or
Counsellours doe stand vpon any
point in the Law which is not so
doubtfull, the Iudges who bee ta-
ken for most expert, bids him goe
forward, and if hee hath no o-
ther to say, but standeth vpon
that point of the Law, that bid-
ding

But some-
times it is
determined
by the same
Court only.

This should
be meant of
a respondes
ouster, when
the opinion
is against
him that ta-
keth an ex-
ception,
which is not
peremptory
he may deny
it by proce-
dation.

ding goe forward, is taken that hee looseth his action, and the Defendant is liensed to depart without a day: and this is where the issue or question is of the Law or *Iuris*. So is that Case where the Law is not doubtfull, according to the matter contained in the Declaration, Answer, Replication, Rejoynder, or Triplication, the Iudge out of hand decideth it. And it is the manner that each partie must agree to the other still in the fact which he cannot denie. For if he once come to denie any deed as not done, nor his writing, that the man by whom the Aduersary claymeth, was not the Aduersaries Ancestor, or the euidence which the Aduersarie bringeth, is not true, or that his gift was former, or any such like exception, which is auailable to abate the Action, or barre the partie, and the other joyneth in the affirmative, and will auerre and proue the same, this is called the issue, and

and immediately all question of the Law ceaseth as agreed by both the parties, that there is no question in the Law. Then as the issue *facti* is found by the twelve men of whom wee shall speake hereafter, so the one partie or other looseth his Cause and Action: so that contrary to the manner of the Ciuill Law, where first the Fact is examined by Witnesses, Indices, Torments, and such like Probationsto finde out the truth thereof, and that done, the Aduocates doe dispute of the Law, to make of it what they can: saying, *ex facto ius oritur*. Here the Sergeants, or Counsellours before the Iudges do in passing forward with their pleading, determine and agree vpon the Law, and for the most part, and in a manner all Actions, as well Criminall as Ciuill, come to the issue and state of some fact which is denied of the one partie, and auerred of the other,

other, which Fact being tried by the twelve men, as they find, so the Action is wonne or lost. And if a man haue many peremptory Exceptions (peremptory Exceptions I call only those which can make the state and issue) because the twelve men be commonly rude and ignorant, the partie shall bee compelled to choose an Exception whereupon to found his issue, which chosen, if hee faile in that by the Verdict of twelve men, hee loseth his Action and Cause, and the rest can serue him for nothing.

Having seene both in France and in other places many Deuises, Edicts and Ordinances, how to abridge Proceffe, and to find how that long Suites in Law might bee made shorter, I haue not perceiued nor read, as yet, so wise, so just, and so well deuised a meane found out as this, by any man among vs in Europe.

Truth

Truth it is, that where this fashion hath not beene vsed and to them to whom it is new it will not bee so easily vnderstood, and therefore they may peraduenture bee of contrary judgement: but the more they doe weigh and consider it, the more reasonable they shall find it.

How the Issue, Question, or *status iuris* is decided, I haue told: now I will shew how it is tried, when it doth come to the Question, State, or Issue of the Deed.

And first I must speake more largely of the manner of proceeding in the Proesse, and of such persons as be necessary for the execution thereof.

Of the Sherife of the shire, and of the Court of Exchequer.

* Seats in ancient Saxon is that which we by a borrowed terme call treasure, whereof is deriued *Scaccarium*, signifying a Court dealing with the Kings treasure or reuenues, & also *Exactor*, that is an Officer which employeth the Kings profit.

THe Romans had to execute the commandements of the Magistrates, *Lictores*, *Viatores*, *Accensos*. The ciuill Law since that time hath other names, terms, & officers. The execution of the commandements of the Magistrates in England, is ordinarily done by the Sherifes. The Sherife (which is as much to say as the Recue or Bailie of the shire) is properly word for word *Quastor Prouincie*, it is hee which gathereth vp and accounteth for the profits of the shire, that come to the Exchequer.

The Exchequer (which is *Fiscus Principis*, or *ararium publicum*, and I cannot tell in what language it is called *Scaccarium*, some think it was first called *statarium*, because that there was the stable place to account for the reuenues of the crowne,

Crowne, aswel that which came of
patrimonie, which we call the de-
measnes, as that which commeth
of other incident requisitions, bee
they rents, customes, tenthes,
quinziesmes, taxes, subsidies wher-
soever the Prince or his court bee
according to the time and occasi-
on) was a place stable, continuall,
and appointed for to reckon and
account. The hearers of the account
(who in Latine may be called *tri-
buniararij*) haue auditors vnder
them; which the Latines doe call
Rationales, but they are the chiefe
for the accounts of the Prince, and
may be called *iuridici rationales*,
in English we call them Barons,
of the Exchequer, whereof is one
who is called the chiefe Baron, as
Tribunus, or *Iuridicus rationalis*
primus, or *princeps*, with others
to them assistant: Chancellor of
the Exchequer, two Chamber-
laines, and Attorney generall. The
chiefe of all is called high Treasurer
of England, as you would say in

H

Latine,

Latine, *Supremus ararij anglici
questor, or Tribunus ararius maxi-
mus.*

He hath the charge and keeping of the King or Queenes treasure, and many officers are at his sole appointment and to him accountant, as well in the Tower, Exchequer, as elsewhere, as Auditors in the Mint, Auditors and tellers in the Exchequer, Receiuers, &c.

The Chancelour is the vnder Treasurer, and is gouernour of the court, vnder the high Treasurer. Many Officers also are at his appointment.

The chiefe Baron is the iudge in law causes incident to this court, the three other Barons assistants.

The Attorney is the Attorney general, to defend the Kings right, and to peruse all grants, particulars, suits and causes handled in this court. There are common Attornies besides, which serue for the suiters of this court.

The other officers are two Remembrancers,

membrancers, two Clarkes of the Pipe, two of the first fruits and tenthes.

The Remembrancers are those which keepe all the Records of the Exchequer betweene the King and his subiects, and enter the rules and orders there made, the one is for the Prince, the other is for the Lord Treasurer.

The Clarkes of the Pipe are those that make leases vpon particulars, and receiue the Sherifes accounts, those receiue also the bonds and titles of other assurances.

In the office of the first fruits, are receiued all first fruits due to his Maiestie by Bishops, Deanes, and all Ecclesiasticall Persons, answerable by order of the law. Other officers are Tellers, Auditors, collectors, rentgatherers, taile makers, &c.

The matters of this court are all punishments as intrusions, alienations without licence, penal, forfeitures vpon popular actions (as a

popular action is while one part is giuen to the informer, the rest to the Prince.) Of these see the whole bodie of statutes at large in *Rastalls* collection.

In this Court are handled all payments, accounts, expences of the Kings reuenues.

The vsuall Proceffe of this court is a *Subpana* out of this court, or a messenger to call the partie.

In this Court bee heard *Quadruplatores*, which we call promoters, which bee those that in popular and penal actions be *delatores*, hauing thereby part of the profit by the law assigned. In this Court if any question bee, it is determined after the order of the common law of England by the twelue men, as I haue said: and all customers which were in Latine called *Publicani*, in Greeke *Telonai*, doe account in this office.

The Sherife of the shire is called in our common Latine *Vicecomes*,

as one would say, *Vicarius comitis*, *Procomes*, doing that seruice, to attend vpon the execution of the commandements of the Tribunals or Iudges which the Earle or countie should doe : which Earle or countie for the most part was attending vpon the Prince in the warres, or otherwise about the Prince, as the word beareth *comes principis*: whereby it may appeare, that the chiefe office of the county or Earle, was to see the Kings iustice to haue course, and to bee well executed in the shire or countie, and the Princes reuenues well answered, and brought in *erarium principis*, which is called of the treasurie.

If any fines or ameracements, which in Latine be called *Multa*, be leuied in any of the said courts, vpon any man, or any arrerages of accounts by the Latines called *reliqua*, of such things as is of customes, taxes, subsidies, or any other such occasions, the same.

the sherife of the shire doth gather, and is respondent therefore in the Exchequer. As for other ordinarie rents of patrimoniall lands, and most commonly for the taxes, customes, and subsidies, there bee particular receiuers and collectors which doe answere it into the Exchequer. The Sherife hath vnder him an vnder Sherife at his charge and appointment, learned somewhat in the law, especially if he bee not learned himselfe, and diuers Bailifes which be called errants, whom he makes at his pleasure, who can know each land and person in the shire; and their abilitie, to go vpon enquests, either to destraine, or to summon him to appeare whom the sherife shall appoint, and for this cause to the sherifes, as to the Minister most proper of the law the Writs be directed.

When any thing commeth to an issue of the deed or fact, there is a Writ and writing directed to
the

the Sherife of the shire where the land is, whercupon the contro- uersies, or where the man dwel- leth of whom the money is de- manded, which writ is called *ve- nire facias*. Then after the same effect an *alias*, *pluries*, or *distrin- gas*, according to the nature of the action to the returne of the Sherife. And if for any disobedience of not comming and appearing there bee a fine (which the Latines do call *Multa*) set vpon any Iurors head, the Sherife is charged with it, and taketh the distresses which in Latine is called *Pignora*, and answereth therefore to the Ex- chequer. The Sherife is also ready by himselfe or by his vnder-She- rife, to serue as well the Iustices of peace in their quarter Sessions, as the Iustices called *Itinerantes* in their great Assizes, when they come into the shire, which is twice in the yeere to dispatch and void actions criminall and ciuill depending at the common law,

and which bee come now to the issue. He hath also the charge of all prisoners committed to the prison which wee call the goale, and when any is condemned to die, it is his charge to see the sentence executed. To bee short, he is as it were the generall minister, and highest for execution of such commandements, according to the Law, as the Iudges ordaine, and, this is enough for the Sherife.

CHAP. XVIII.

Of the twelue men.

OF what manner and order of men in the common-wealth the twelue men be, I haue already declared. The Sherife alwaies warneth foure and twentie to appeare, lest peraduenture any might bee sicke or haue a iust cause of absence: and if there be not enow to make an enquest: the absents bee amerced. For although they bee called twelue men, as a man would

say

say *duodecim viri*, yet if they bee
twelue, twentie, or the whole
number of foure and twentie, that
is no matter, twelue they must bee
at least to make an enquest, or as
some call it a quest. An enquest
or quest is called this lawfull kind
of triall by twelue men. In actions
ciuill, which is either of contracts
or for land, or possession, when so
many of those that be warned ap-
peare at the call, as be able to make
an enquest, which as I said before
bee no lesse then twelue, either
part when they bee come taketh
their challenges against so many
of them as they will, which bee,
that hee may not spend so much
land a yeere, hee is allied, feed,
seruant to his aduerser partie, he is
his enemy, &c. And two of the
whole number doe trie, and allow
or disallow the rest.

If after exceptions, there be so many
reiected that there is not a full en-
quest in some cases that day is lost,
in some the enquest is filled *ex cir-*

circumstantibus: when the quest is full, they bee sworn to declare the truth of that issue according to the euidence, and their conscience. Then the Sergeants of either side declare the issue, and each for his Clyent saith as much as he can. Euidences of writings bee shewed, witnesses be sworn, and heard before them, not after the fashion of the ciuill Law. but onely that not onely the twelue but the Iudges, the parties, and as many as bee present may heare what each witnesse doth say: The aduerse partie or his aduocates which we call Counsaillors and Sergeants, interrogateth sometime the witnesses, and driueth them out of countenance.

Although this may seeme strange to our Ciuilians now, yet who readeth *Cicero* and *Quintilian*, well shall see, that there was no other order and manner of examining witnesses, or deposing among the Romans. in their time, When it is thought that it is enough plea-

ded before them and the witnesses haue said what they can, of the Iudges with a brieve and pithie recapitulation reciteth to the twelue in summe the arguments of the Sergeants of either side, that which the witnesses haue declared, and the chiefe points of the euidence shewed in writing, and once againe putteth them in mind of the issue, and sometime giueth it them in writing, deliuering to them the euidence which is shewed on either part, if any bee, (euidence heere is called writings of contracts, authenticall after the manner of England, that is to say, written, sealed, and deliuered) and biddeth them goe together.

Then there is a Bayliffe charged with them to keepe them in a chamber not farre off, without bread, drinke, light or fire: vntill they be agreed: that is, till they all agree vpon one verdict concerning the same issue, and vpon one among them who shall speake for them.

them all when they be agreed : for it goeth not by the most part, but each man must agree. They returne, and in so few words as may be, they giue their determination: few I call six, seauen, or eight words at the most (for commonly the issue is brought so narrow, that such number of words may be enough to affirme or to deny it): which done they are dismissed to goe whether they will. The party with whom they haue giuen their sentence, giueth the enquest their dinner that day most commonly, and this is all they haue for their labour, notwithstanding that they come, sometwentie, some thirtie, or fortie miles or more, to the place where they giue their verdict, all therest is of their owne charge. And necessarily all the whole twelue must be of that shire and foure of them of the hundred where the Land lieth which is in controuersie, or where the partie dwelleth who is the defendant.

CHAP. XIX.

*Of parts of Shires called Hundreds,
Lathes, Rapes, Wapentakes.*

AN Hundred, or Lath, Rape,
or Wapentake is called of the
diuisions or parts of shires, in
diuers Countries diuersly named,
after the manner and language of
each Country. For the shires be
diuided, some into tenne, twelue,
thirteene, sixteene, twentie or
thirtie Hundreds, more or lesse,
either that they were at the first a
Hundred Townes and Villages in
each Hundred: and although now
they bee but sixteene, twentie,
thirty, forty, fifty, threescore, more
or lesse, yet it is still called an
Hundred, or else there were but
so many at the first as be now, or
a few more or lesse, and they did
find the King to his warres an
hundreth able men. Lath, and
Rape I take to be names of ser-
uice, for that so many Townes in
old

old time and in the first pouertie of the Realme did meet together in one day to carry the Lords corne into his barne; which is called in old English a Lath. Or that they met at commandement of the Lord to reape his corne.

Wapentake I suppose came of the Danes, or peradventure of the Saxons. For that so many townes came by their order then to one place, where was taken a muster of their Armour and weapons, in which place from ^{thence} that could not finde sufficient pledges for their good a bearing, their weapons were taken away: weapon or wapon in old English doe signifie all Armes offensive, as sword, dagger, speare, lance, bill, bowes, arrowes.

Of that place where musters were taken, or where the said seruices were done, the hundreds, lathes, rapes, and wapentakes, had and haue yet their names, which be most commonly good townes,
and

and it is to be thought at the first they were all such. But sometime now in places wherof the hundred hath the name, no mention nor memory of a towne remaineth: such mutation time bringeth with it of all things. A hundreth hath one or two high Constables, who haue some authoritie ouer all the lower and particular Constables. Those high Constables be made by the Iustices of the peace of the shire, and each hundred hath his Bailife who is made by the Lord, if any hath that libertie, or else by the Sherife of the shire for the time being.

CHAP. XX.

Of the Court Baron.

IT may appeare strange that of thirty sixe shires, whereof each shire is diuided into diuers hundreds, each hundred containing diuers Parishes, all pleading should

should be but in one place, that is in Westminster Hall, and that but in certaine times of the yeare, making litle more then one quarter of the yeare in the whole. And one would thinke that there should be much lacke of Iustice and right, and much wrong taken without redresse. But it is not so: The people being accustomed to liue in such an equalitie of Iustice, and in such sort, that the rich hath no more aduantage therein then the poore, the Proces and proceedings to the iudgment being so short, and iudgments also being peremptory and without appellati-
 on: yet to helpe for small matters where no great summe is in question, there are other Courts. In euery shire from three weekes, to three weekes, the Sherife for small things not passing fortie shillings, and in certaine hundreds & liberties the Baylife likewise frō three weekes to three weekes holdeth plea. And whosoever is possession-
 ner

ner and owner of a Manner, may hold from three weeks to three weeks, or at his pleasure, of his Tennants, and amongst his Tennants, a court called a court baron, and there his Tennants, being sworne make a Iurie, which is not called the enquest, but the homage. These principally doe enquire of the copie-holders and other free-holders that be dead since the last Court, and bring in their heires and next successors, and likewise of incroachment or intrusion of any of the Tennants against the Lord, or among themselves. They make orders and lawes amongst themselves, the pain of them if they be after broken, commeth to the Lord. And if any small matter be in controverſie, it is put to them, and commonly they doe end it. But these Courts doe ſerve rather for men that can be content to be ordered by their neighbours. and which
 loue.

loue their quiet and profit in their husbandry more then to be busie in law. For whether partieso euer will, may procure a writ out of the higher Court, to remoue the the plea to Westminster.

In Cities and other great townes there be diuers liberties to hold plea for a bigger sum, which doe determine as well as the Common Law and after the same manner, and yet for them that will it may be remoued to Westminster Hall.

King *Henry* the eight ordained first a president, counsaillours, and Iudges, one for the Marches of Wales, at Ludlow, or else where: another for the North partes of England, at Yorke, where be many causes determined. These two are as bee Parliaments in France. But yet if there bee any matters of great consequence, the partie may moue at the first, or remoue
it

it afterwards to Westminster Hall, and to the ordinary Iudges of the Realme or to the Chancellour, as the matter is.

These two Courts doe heare matters before them, part after the Common Law of England; and part after the fashion of the Chancerie.

CHAP. XXI.

Of the Leet, or Law day.

L Eet, or Law day is not incident to euery Mannor, but to those only which by speciall grant, or long prescription, haue such libertie. This was, as it may appeare, first a speciall trust and confidence and Commission giuen to a few put in trust by the Prince, as is now to the Iustices of Peace, to see men sworne to the Prince, to take Pledges and Sureties in that manner of one for another to answer for obedience and truth, to enquire

enquire of priuie Conspiracies, Frayes, Murders, and Bloudsheds, and to this was added the oversight of Bread and Ale, and other Measures. Many times they that bee out of the homage and Court Baron of that Mannor and Lordship, bee neuerthelesse restrained and answerable to come to the Leet. This Leet is ordinarily kept but twice in the yeere, and that at termes and times prescribed.

The Leet and Law day is all one, and betokeneth word for word, *Legitimum* or *iuridicum diem*. Law the old Saxons called *Lant* or *lag*, and so by corruption and changing of Language from *Lant* to *Leet*, vnderstanding day, they which keepe our full English terme, call it yet Law-yad.

CHAP. XXII.

Of the proceedings of Causes Criminall, and first of the Iustices of the Peace.

BEfore the manner of proceeding in Causes Criminall can be well vnderstood, it will be necessary to speake of three persons, the Iustices of Peace, the Coroners and Constables. The Iustices of Peace be men elected out of the Nobilitie, higher and lower, that is the Dukes, Marqueesses, Barons, Knights, Esquires and Gentlemen, and of such as bee learned in the Lawes, such, and in such number as the Prince shall thinke meete, Iustices of Quorum. and in whom for wisdome and discretion he putteth his trust, inhabitants within the Countie: sauing that some of the high Nobilitie & chief Magistrates for honours sake are put in all, or in most of the Commissions of all the Shires of England. These haue no time of
their

their rule limited, but by Commission from the Prince alterable at pleasure.

At the first they were but foure, after eight, now they come commonly to thirtie or fortie in euery Shire, either by increase of riches, learning, or actiuitie in policie and gouernment. So many more being found, which haue either will, or power, or both, are not too many to handle the affaires of the Common-wealth in this behalfe. Of these in the same Commission be certaine named, which bee called of the *Quorum*, in whom is especiall trust reposed, that where the Commission is giuen to fortie or thirtie, and so at the last it cometh to foure or three, it is necessary for the performance of many affaires to haue likewise diuers of the *Quorum*. The words of Commission be such. *Quorum vos A B C D. E F. vnum esse volumus.*

The Iustices of the Peace be those in whom at this time for repressing
of

of Robbers, Theeves and Vagabonds, of priuie complots and conspiracies, of Riots, and violences, and all other misdemeanours in the Common-wealth, the Prince putteth his speciall trust. Each of them hath authoritie vpon complaint to him made of any Theft, Robbery, Man-slaughter, Murder, Violence, Complots, Riots, vnlawfull Games, or any such disturbance of peace and quiet of the Realme, to commit the persons whom he supposeth offenders, to prison, and to charge the Constable or Sheriffe to bring them thither, the Gaoler to receiue them, and keepethem till hee and his fellows doe meet. A few lines signed with his hand is enough for that purpose: these doe meet foure times in the yeere, that is in each quarter once, to enquire of all the misdemeanours aforesaid: at which dayes the Sheriffe or his vnder-Sheriffe with his Baylifes, be there to attend vpon him, who must prepare

This is not
alwayes and
in all places
observed but
onely con-
cerning the
grand En-
quest.

pare against that time foure En-
quests of foure and twenty Yeomen a piece, of diuers hundreds in the Shire, and besides one which is called the great Enquest out of the bodie of the Shire mingled with all. These fise Enquests are sworne before them to enquire of all Heretiques, Traytors, Thefts, Murthers, Man-slaughters, Rapes, false Moniers, Extortioners, Riots, Routs, forcible Entries, vnlawfull Games, and all such things as bee contrary to the peace and good order of the Realme, and to bring in their Verdict. If they among themselves vpon their own knowledge doe find any culpable, they cause one of the Clarkes to make the Bill. And if any bee there to complaine vpon any man for these faults, he putteth in his Bill, which Bill is presented first to the Iustices sitting vpon the Bench, to see if it bee conceiued in forme of Law, which done the complainant doth deliuer it to one of these Enquests,
and

and after the complaint is sworne, he declareth to them what he can, for the prooffe of it. And if they find it true, they doe nothing but write on the backside of it, *billa vera*, as ye would say, *scriptum verum*, or *accusatio iusta*, or *reus est qui accusatur*: Then hee who is there named is called indicted. The manner of the Bill is such, *Inquiratur pro Domino Rege*.

If they doe not find it true, they write on the backside *Ignoramus*, and so deliuer it to the Iustices, of whom it is rent into pieces immediately: hee that is indicted is accounted a lawfull prisoner, and after that time looked more straitly vnto. For this Indictment is no conuiction: and if he be indicted, and be not alreadie in prison, the Sheriffe if he can find him, bringeth him into prison: if hee cannot find him, processe is made out against him, to render himselfe prisoner, or else he shall be out-lawed. So he is called three times in diuers

Countie dayes to render himselfe to the Law. The fourth is called the Exigent, by which hee is outlawed not rendring himselfe, as ye would say: *exactus* or *actus in exilium*. The Out-law looseth all his goods to the King for his disobedience. But if after he will render himselfe to answer to the Law, and shew some reasonable cause of his absence, many times of grace his Out-lawrie is pardoned. These meetings of the Iustices of Peace foure times in the yeere, be called quarter Sessions, or Sessions of enquire, because that nothing is there determined touching the Malefactors, but only the custodie of them: and this kind of proceeding which is by inquisition of the twelue men within themselves, and their owne consciences, or by denunciation of him that putteth in his Bill to the twelue, is called at the Kings suite, and the King is reckoned the one party, and the prisoner the other. The Iustices of the
Peace

Peace doe meet also at other times by commandement of the Prince vpon suspition of warre, to take order for the safety of the Shire, sometimes to take musters of Harnesse and able men, and sometimes to take order for the excessiue wages of Seruants and Labourers, for excesse of apparell, for vnlawfull Games, for Conuenticles and euill order in Alehouses, and Tauernes, for punishment of idle and Vagabond persons, and generally as I haue said for the good gouernment of the Shire, the Prince putteth his confidence in them. And commonly euery yeere, or each second yeere in the beginning of Summer or afterwarde, (for in the warme time the people for the most part be more vnruely) euen in the calme time of Peace, the Prince with his Counsel chooseth out certaine Articles out of penall Lawes alreadie made for to repress the pride and euill rule of the popular, and sendeth them downe to the Iu-

offices, willing them to looke vpon those points, and after they haue met together, and consulted among themselves, how to order that matter most wisely and circumspectly, whereby the people might be kept in good order and obedience after the Law, they diuide themselves by three or foure: and so each in his Quarter taketh order for the execution of the said Articles.

And then within certaine space they meet againe and certifie the Prince or his Priuy Counsell, how they doe find the Shire in rule and order touching those points, and all other disorders. There was neuer in any Common-wealth deuised a more wise, a more dulce and gentle, nor a more certaine way to rule the people, whereby they are kept alwayes as it were in a bridle of good order, and sooner looked vnto that they should not offend, then punished when they haue offended. For seeing the chiefe amongst them, their Rulers, haue
this

speciall charge, and doe call vpon it, and if occasion so doe present, one or two presently are either punished, or sent to prison for disobedience to those old Orders and Lawes, they take a feare within themselves, they amend, and doe promise more amendment. So that it is as a new furbishing of the good Lawes of the Realme, and a continuall repressing of Disorders, which doe naturally rest among men.

But as the inuention of this, and the vse and execution thereof is the most benefit that can bee deuised for the Common-wealth of England: so when it shall bee misused, dissembled with, or bee condemned, and be done *pro forma tantum*, & as they terme it in France, *Par mainere d'acquit* only, it will be the present ruine (though not at the first perceiued) of the Common-wealth. Of which the fault may be as well in the Commanders for not making good choice,

what, and how they command, as in the commanded, for not executing that which is commanded.

CHAP. XXIII.

Of Hue and Crie, and recognisance taken upon them that may give evidence.

BY the old Law of England, if any theft or robbery be done, if hee that is robbed, or hee that seeth or perceiueth that any man is robbed, do leuy Hue and Cry, that is to say, doe cry and call for aide, and say that a Theft or Robbery is done contrary to the Princes peace and assurance: the Coustable of the Village to whom hee doth come, and so make that cry, ought to raise the Parish to aide him and seek the Thiefe, and if the Thiefe be not found in that Parish, to go to the next, and raise that Constable, and so still by the Constables

stables and them of the Parish one
 after another. This hue and cry
 from Parish to Parish is carried
 till the Thiefe or robber be found.
 That Parish which doth not his
 dutie, but letteth by their negli-
 gence the Thiefe to depart, doth
 not only pay a fine to the King, but
 must repay to the party robbed his
 dammages. So that euery English
 man is a Sergeant to take the thief,
 and who sheweth himselfe negli-
 gent therein, do not onely incurre
 euill opinion therefore, but hardly
 shall escape punishment: what is
 done with the Thiefe or Robber
 when he is taken, I shall shew you
 hereafter. The same manner is fol-
 lowed if any man bee slaine, for
 straight the murtherer is pursued of
 euery man till he be taken. So soon
 as any is brought to the Iustices of
 Peace by this Hue and cry, by the
 Constable, or any other who doth
 pursue the malefactor, he doth ex-
 amine the malefactor, and writeth
 the examination, and his confessi-

on: then hee doth bind the party that is robbed, or him that sueth, and the Constable, and so many as can giue euidence against the Malefactor to be at the next Sessions of Gaole deliury, to giue their euidence for the King. He bindeth them in Recognisance of tenne pound, twentie pound, thirtie pound, forty or an hundred pound, according to his discretion, and the qualitie of the crime: which certified vnder his hand, is lenied upon the Recognisance, if they faile of being there.

CHAP. XXIV.

Of the Coroner.

BVt if any Man, Woman, or child, be violently slaine, the murtherer not knowne, no man ought or dare bury the body before the Coroner hath seene it. The Coroner is one chosen by the Prince of the meaner sort of Gentlemen,

tlemen, and for the most part a
 man seene in the Lawes of the
 Realme, to execute that office. And
 if the person slaine (slaine I call
 heere, whosoever he be, man, wo-
 man or child, that violently com-
 meth to his death, whether it be by
 knife, poison, cord, drowning,
 burning, suffocation, or otherwise,
 be it by his owne fault or default,
 or by any other) if (I say) the per-
 son slaine be buried before the Co-
 roner do come (which for the most
 part men dare not doe) hee doth
 cause the bodie to be taken vp a-
 game, and to be searched, and vp-
 on the sight of the body so violent-
 ly come to his death, he doth em-
 pannell an Enquest of twelue men
 or moe, of those which come next
 by, bee they strangers or inhabi-
 tants, which vpon their oaths, and
 by the sight or view of the bodie,
 and by such informations as they
 can take, must search how the per-
 son slaine came to his death, and
 by whom as the doer or causeth er-

of. These are not enclosed into a strait place, as I told before of other enquests) but are suffered to goe at large, and take a day, sometime after twentie or thirtie dayes, more or lesse, as the fact is more euident, or more kept close, to giue their euidence at which day they must appeare there againe before the said Coroner to giue their verdict. So sometime the person to haue slaine himselfe, sometime the brother, the husband, the wife, the sister, some of acquaintance or stranger, such as God will haue reuealed, be taken. For whosoever they doe finde as guiltie of the murther, he is straight committed to prison, and this is against him in the nature of an inditement, which is not a full condemnation, as yee shall see hereafter.

The empanelling of this enquest, and the view of the bodie, and the giuing of the verdict, is commonly in the street in an open place,

place, and in *Corona Populi*: but I take rather that this name cometh, because that the death of e-
uery subject by violence is accounted to touch the Crowne of the Prince, and to be a detriment vnto it, the Prince accounting that his strength, power, and Crowne doth stand and consist in the force of his people, and the maintenance of them in securitie and peace.

CHAP. XXV.

Of the Constables.

THESE men are called in the elder bookes of our lawes of the Realme *Custodes pacis*: and were at the first in greater reputation than they be now. It may appeare there was a credit giuen vnto them, not altogether vnlike to that which is now giuen to the Iustices of peace. To this day if any affray chaunce to be made the Constables ought and will charge them

them that beat debate to keepe to the Princes peace, and whosoever refuseth to obey the Constable therein, all the people will set straight vpon him, and by force make him to render himselfe to be ordered. Likewise if any be suspected of Theft, or receiuing, or of murther, or of man slaughter, the Constable may take such persons, yea enter into any mans house with sufficient power, to search for such men till hee finde them: and if hee see cause, keepe the suspected persons in the stocks, or custodie, till he bring them before a Iustice of the Peace to be examined. But for so much as euery litle Village hath commonly two Constables, and many times Artificers, Labourers, and men of small abilitie bee chosen vnto that Office, who haue no great experience, nor knowledge, nor authoritie: the Constables at this presens (although this they may doe vpon their owne authoritie)

yet.

yet they seeme rather to be as it were the executors of the commandement of the Iustices of Peace. For the Iustice of peace as soone as hee vnderstandeth by complaint that any man hath Stollen, Robbed, slaine, or any seruant or laborer without licence, hath departed out of his Masters seruice, or any that liueth idle and suspectedly, knowing once in what Parish he is, hee writeth to the Constable of the Parish, commanding him in the Princes name, to bring that man before him: The Constable dareth not disobey. The man is brought and examined by the Iustice, and if the Iustice doe finde cause, he committeth him to the same Constable to conuey him further to the Princes Gaile, where the partie must lie, till the Iustices of Peace doe meete either at their quarter Sessions, or at their Gaile deliuary, and that the law hath either condemned or acquitted him. These Constables are

One or two
Constables
headbo-
rowes or
Tithingmen.

called

called in some places Headborowes, in some places Tithingmen, and bee like to them who are called Consuls in many Towns and Villages in France. The Constables are commonly made and sworne at the Leets of the Lords, chosen thereto by the homage, and they keepe that office sometime two, three, or foure yeeres, more or lesse as the parish doth agree. What Head-borough doth betoken, it is easily knowne, our language doth declare him as the head or chiefe of the borough or village: likewise Tithing man is the chiefe of the tithing, Constable seemeth to come of our old English word *Kinning* which is *Kinningstable*, as yee would say, a man established by the King for such things, as appertaine to pleas of the Crowne, and conseruation of the Kings peace, and as I said at the first, were in some more reputation, approching to that authoritie, which the Iustices of peace now doe hold.

CHAP.

* *Kinningstable* is Regia virgula, the Kings rod or wand, signifying the Kings power or authoritie, a representation whereof is the vse of maces & white staves by officers in the Commonwealth.

CHAP. XXVI.

*Of the Sessions of gaole deliuerie,
and the definitiue proceedings in
causes criminall.*

HOW theeues and murtherers
and other malefactors a-
gainst the Crowne and peace, are
taken and brought into hold to
answere to iustice, partly by hue
and cry, partly by information,
and partly by the diligence of the
Iustices of peace and the Consta-
bles: and how at the quarter Ses-
sions they be indicted, or else by
the Coroners yee haue heard
before. Enditement (as yee may
perceiue by that which is also
gone before) is but a former
iudgement of twelue men which
be called enquirers, and no defini-
tiue sentence, but that which in
Latine is called *Preiudicium*, it
doth but shew what opinion the
country hath of the malefactor:
and therefore commonly men be
indicted.

indicted absent, not called to it, nor knowing of it. For though a man be indicted, yet if when he come to the arraignment, there be no man to pursue further, nor no euidence of witnesse or other triall and *indices* against him, he is without difficultie acquitted. No man that is once indicted can be deliuered without arraignment: For as twelue haue giuen a preiudice against him, so twelue againe must acquit or condemne him. But if the prisoner bee not indicted, but sent to prison vpon some suspition or suspitious behauour, and none doe pursue him to the iudgement, first being proclaimed thus, A.B. prisoner standeth heere at the barre, if any man can say anything against him, let him now speake, for the prisoner standeth at his deliuerance: If no man doe then come, hee is deliuered without any further processe or trouble, agreeing first with the gaylor for his fees. And these be called
 acquitted

acquitted by proclamation. Twice
in euery yeere, the one is com-
monly in Lent what time there is
vacation from pleading in West-
minster Hall, the other is in the
vacation in Summer, the Prince
doth send downe into euery shire
of England certaine of his Iudges
of Westminster Hall, & some Ser-
geants at the law with commission
to heare and determine ioynthly
with the Iustices of the peace all
matters criminal, and all prisoners
which be in the goales. These
Iudges doe goe from shire to
shire till they haue done their
circuit of so many shires as be
appointed to them for that yeare:
at the end of the terme going be-
fore their circuit, it is written
and set vp in Westminster Hall on
what day and in what place they
will be. That day there meeteth all
the Iustices of the peace of that
shire, the sherife of that shire,
who for that time beareth
their charges, and asketh after
al-

allowance for it in the Exchequer.

The sherife hath ready for criminall causes (as I writ before at the Sessions of inquirie) foure, fve, or fixe enquests readie warned to appeare that day to serue the Prince, & so many more as he is commanded to haue ready to go in ciuill matters betwixt priuate men, which they call *nisi prius*, because that word is in the writ.

In the Towne house, or in some open or common place, there is a tribunall or a place of iudgement, made aloft vpon the highest bench, there sit the Iudges, which be sent downe in commission, in the middest. Next them on each side sit the Iustices of peace, according to their degree. On a lower bench before them, the rest of the Iustices of peace, and some other gentlemen, or their Clarkes. Before these Iudges and Iustices there is a Table set beneath, at which sitteth the *Custos Rotulorum*, or keeper of writs, The

Theschetor, the vnder sherife, and
 such Clarkes as doe write. At the
 end of that Table there is a barre
 made with a space for the en-
 quests, and twelue men to come
 in when they are called, behind
 that space another barre, and
 there stand the prisoners which be
 brought thither by the Gayler, all
 chayned one to another. Then the
 Cryer cryeth, and commandeth
 silence. One of the Iudges briefly
 telleth the cause of their comming,
 and giueth a good lesson vnto the
 people. Then the prisoners are
 called for by name and bidden to
 answer to their names. And when
 the *Custos Rotulorum* hath
 brought forth their endictments,
 the Iudges doe name one or two,
 or three of the prisoners that are
 endicted, whom they will haue
 arraigned. There the Clark speak-
 eth first to one of the prisoners:
 A.B. come to the Barre, hold vp
 thy hand. The Clarke goeth on:
 A.B. thou by the name of A.B. of
 such

such a Towne, in such a Country art endicted, that such a day, in such a place, thou hast stolne with force and armes an horse, which was such ones, of such colour, to such a valour, and carried him away feloniously, and contrary to the peace of our soueraigne Lord the King. What sayest thou to it, art thou guiltie or not guilty? If he will not answer, or not answer directly guilty or not guilty, after he hath beene once or twice so interrogated, he is iudged mute, that is, dumbe by contumacie, and his condemnation is to be pressed to death, which is one of the cruellest deathes that may be: he is laid vpon a table, and another vpon him, & so much waight of stones or leade laid vpon that table, while as his bodie bee crushed, and his life by that violence taken from him. This death some strong and stout hearted man doth chooise, for being not condemned for felony, his blood is

not corrupted, his lands nor goods confiscate to the Prince, which in all cases of felonie are commonly lost from him and his heires, if he be foreiudged, that is, condemned for a felon by the law. If he confesse the inditement to be true, then when he is arraigned, no twelue men goe vpon him, there resteth but the Iudges sentence of the paine of death.

If he plead not guiltie, as commonly all theeues, robbers and murtherers doe, though they haue confessed the fact before the Iustice of the peace that examined them, though they be taken with the manner, which in Latine they call *in flagranti crimine*, howsoeuer it be, if hee plead there not guiltie, the Clarke asketh him how he will bee tried, and telleth him he must say, by God and the countrie, for these be the words formall of his triall after inditement, & where the Prince is partie: if the prisoner say so, I wil be
tried

tried by God and the Country:
 then the Clarke replieth. Thou
 hast beene indited of such a crime
 &c. Thou hast pleaded not guiltie,
 being asked how thou wilt be
 tried, thou hast answered by God
 and by the Countrie. Loe these
 honest men that be come heere, be
 in the place and stead of the
 Country : and if thou hast any
 thing to say to any of them, looke
 vpon them well & now speake, for
 thou standest vpon thy life and
 death. Then calleth he in the first
 Iuror. *B. C.* come to the Booke,
 and so hee giueth him an oath to
 goe vprightly betwixt the Prince
 and the prisoner, &c. If the priso-
 ner obiecteth nothing against
 him, hee calleth another, and so
 another, till there be twelue or a-
 boue : and for the most part the
 prisoner can say nothing against
 them, for they are chosen but for
 that day, and are vnknowne to
 him, nor they know not him, as I
 said, being substantiall Yeomen
 that

that dwell about the place, or at least in the Hundred, or neere where the felonie is supposed to be committed, men acquainted with daily labour and trauell, and not with such idle persons as be readie to doe such mischiefes.

When the Enquest is full, and the prisoner hath objected nothing against them, as indeed seldome he doth, for the cause aboue rehearsed: The Clarke saith to the Crier, *Countes*, (in French as yee would say reckon) and so nameth all those that bee on the Quest. The Crier at euery name crieth aloud, one, then two, three, foure, and so till the number bee full of twelue or more, and then saith good men & true: and then saith aloud: If any can giue euidence, or can say any thing against the prisoner, let him come now, for hee standeth vpon his deliuerance. If no man come in, then the Iudge asketh who sent him to prison, who is commonly one of the Iustices of Peace: he (if
hee

hee be there) deliuereth vp the examination which he tooke of him, and vnderneath the names of those whom he hath bound to giue euidence: although the Malefactor hath confessed the crime to the Iustice of the Peace, and that it appeare by his hand and confirmation, the twelue men will acquit the prisoner, but they which should giue euidence pay their Recognizance. Howbeit this doth seldome chance, except it be in small matters, and where the Iustice of Peace who sent the prisoner to the Iaile is away. If they which be bound to giue euidence come in, first is read the examination, which the Iustice of Peace doth giue in, then is heard (if hee bee there) the man robbed what he can say, being first sworn to say the truth, and after the Constable, & as many as were at the apprehension of the Malefactor: and so many as can say any thing, being sworn one after another to say truth. These bee set in
such

such a place as they may see the Iudges and the Iustices, the enquest and the Prisoner, and heare them, and bee heard of them all. The Iudge after they be sworne, asketh first the partie robbed, if he know the prisoner, and biddeth him look vpon him: he saith yea, the prisoner sometime saith nay. The partie Pursuant giueth good ensignes, *verbi gratia*, I know thee well enough, thou robbedst me in such a place, thou beatedst mee, thou tookest my horse from me, and my purse, thou hadst then such a coate, and such a man in thy company: The Thiefe will say no, and so they stand awhile in altercation, then he telleth all that he can say: after him likewise all those who were at the apprehension of the prisoner, or who can giue any *indices* or tokens, which we call in our language euidence against the malefactor. When the Iudge hath heard them say enough, hee asketh if they can say any more: If they

say no, then hee turneth his speech to the Enquest, Good men (saith hee) yee of the Enquest, yee haue heard what these men say against the prisoner, you haue also heard what the prisoner can say for himselfe, haue an eye to your oath, and to your dutie, and doe that which God shall put in your mindes to the discharge of your consciences, and marke well what is said. Thus sometime with one Enquest is passed to the number of two or three prisoners. For if they should bee charged with more, the Enquest will say, my Lord, wee pray you charge vs with no more, it is enough for our memory. Many times they are charged but with one or two. At their departing, they haue in writing nothing giuen them but the Indictment, the Clarke repeating to them to the effect of it, and shewing more, that if they find him guiltie, they shall inquire what goods, lands, and tenements the said person had
at

at the time of the felony committed : and if they find any, they shall bring it in : if none, they shall say so. If they finde him not guilty, they shall enquire whether he fled for the felony or no.

And there is a Bayliffe to waite vpon them, and to see that no man doe speake with them, and that they haue neither bread, drinke, meate, nor fire brought to them, but there to remaine in a chamber together till they agree. If they be in doubt of any thing that is said, or would heare again some of them that giue euidence, to interrogate them more at full, or if any that can giue euidence came late, it is permitted that any that is sworne to say the truth may be interrogated of them to informe their consciences. This is to be vnderstood, although it will seeme strange to all Nations, that do vse the Ciuill Law of the Romane Emperours, that for life and death there is nothing put in writing but the Indictment

only. All the rest is done openly in the presence of the Iudges, the Iustices, the Enquest, the prisoner, and so many as will or can come so neere as to heare it, and all Depositions and Witnessses giuen aloud, that all men may heare from the mouth of the Depositors and Witnessses what is said. As of this, so is it of all other prisoners after the same sort. By that time that the Enquests for the prisoners bee dispatched, it is commonly dinner time, the Iudges and Iustices goe to dinner, and after dinner doe returne to the same place: if the Enquest bee not ready for the prisoners, they goe to some other Enquests of *Nisi prius*, which be ciuill matters and priuate, to driue out the time. The Enquests haue no sooner agreed vpon their charge one way or other, but they tell the Baylisfe, and pray to be heard, and considering that they be by themselves, all this while as prisoners, as I said before, it is no maruaile though

though they make expedition. The prisoners be sent for againe to the Barre, the Enquest which hath agreed, is called for, each one of the Iurie by his name to which he answereth. Then the Clarke asketh if they be agreed, and who shal speak for them, one or more saith yea, he that speaketh for them all is called the foreman, and commonly it is he that is first sworne: then the prisoner is bidden to hold vp his hand. The Clarke saith vnto him: Thou art indicted by the name of *A.* of such a place, &c. being there-fore arraigned thou pleadest there-to not guilty, being asked how thou wouldst be tried, thou saidst, *By God and thy Country.* These honest men were giuen to thee by God and thy Prince for thy Country: Harken what they say. Then he asketh of the Enquest, what say you? Is he guilty or not guilty? The foreman maketh answere in one word, guiltie, or in two, not guiltie: the one is deadly, the o-

ther acquitteth the prisoner. So that neither Iudge nor Iustice hath to doe, or can reuerse, alter, and change the matter: if they say guiltie. The Clarke asketh what Lands, Tenements, or Goods the Prisoner had at the time of the felony committed, or at any time after. Commonly it is answered, that they know not, nor it shall not greatly need, for the Sheriffe is diligent enough to enquire of that, for the Princes and his owne advantage, and so is the Escheatour also.

Of him whom the twelue pronounce guiltie, the Iudge asketh what he can say for himselfe, if hee can reade, he demandeth his Clergie. For in many felonies, as in Theft of Oxen, Sheepe, Money, or other such things, which bee no open robberies by the high way side, nor assaultring one by night in his house, putting him that is there in feare, such is the fauour of our Law, that for the first fault the Felon

lon shall be admitted to his Clear-
 gie, for which purpose, the Bishop
 must send one with authoritie vnder
 his Seale to be Iudge in that
 matter at euery Gaole deliuey. If
 the condemned man demandeth to
 be admitted to his Book, the Iudge
 commonly giueth him a Psalter,
 and turneth to what place he will.
 The Prisoner readeth so well, as
 hee can (God knoweth sometime
 very slenderly,) then he asketh of
 the Bishops Commissary, *Legit vt
 Clericus?* The Commissary must
 say *legit* or *non legit*, for these be
 the words formall, and our men of
 Law be very precise in their words
 formall. If he say *legit*, the Iudge
 proceedeth no further to sentence
 of death: if hee say *non*, the Iudge
 forthwith, or the next day proceed-
 eth to sentence, which is done
 by word of mouth onely. Thou
A. hast beene indicted of such a
 felony, and therefore arraigned,
 thou hast pleaded not guiltie, and
 put thy selfe vpon God and thy

Country, they haue found thee guiltie, thou hast nothing to say for thy selfe, Law is, thou shalt returne to the place from whence thou camest, from thence thou shalt goe to the place of execution, there thou shalt hang till thou be bee dead. Then hee saith to the Sheriffe, Sheriffe doe execution: hee that claimeth his Cleargie, is burned forthwith in the presence of the Iudges, in the brawne of his hand with a hot iron, marked with the letter *T.* for a Thiefe, or *M.* for a Man-slayer, in cases where Cleargie is admitted, and is deliuered to the Bishops Officer to bee kept in the Bishops prison, from whence after a certaine time by another Enquest of Clarkes he is deliuered & set at large: but if he be taken and condemned the second time, and his mark espied, he goeth to hanging. Hee whom the Enquest pronounceth not guiltie, is acquitted forthwith, and discharged of prison,

ion, paying the Gaolers fees, and if hee know any priuate man who purchased his Indictment, and is able to pursue it, hee may haue an action of Conspiracie against him, and a large amends : but that case chanceth seldome.

CHAP. XXVII.

Certaine orders peculiar to England, touching punishments of Malefactors.

FOr any Felony, Man-slaughter, Robbery, Murther, Rape, and such capitall Crimes as touch not Treason and *lesam Majestatem*, we haue by the Law of England no other punishment but to hang till they be dead : when they be dead, every man may bury them that will, as commonly they bee: Heading, tormenting, dismembred either arme or legge, breaking vpon the wheele, empailing, and such cruell torments, as be v-

sed in other Nations by the order of the Law, we haue not : and yet as few murthers committed as any where : nor it is not in the Iudges, or the Iustices power, to aggravate or mitigate the punishment of the Law, but in the Prince only, and his priuy Counsell, which is marvellous seldome done. Yet notable murderers many times by the Princes commandement after they be hanged with cord till they be dead, be hanged with chaines while they rot in the ayre.

If the Wife kill her Husband, she shall be burned aliue. If the seru-
uant kill the Master, hee shall bee drawne on a hurdle to the place of execution : it is called *petit treason*. Impoysoners, if the person diethereof, by a new Law made in King *Henrie* the Eights time, shall bee boiled to death : but this mischiefe is rare, and almost vn-
knowne in England. Attempting to impoyson a man, or laying a wait to kill a man, though hee wound.

wound him dangerously, yet if death follow not, it is no felony by the Law of England, for the Prince hath lost no man, and life ought to be giuen wee say, but for life onely.

And againe, when a man is murdered, all be principals and shall die, euen he that doth but hold the candle to giue light to the Murthers. For mitigation and moderation of paines, is but corruption of Iudges, as wee thinke. Likewise tormentor question, which is vsed by the order of the Ciuill Law, and custome of other Countries, to put a Malefactor to excessiue paine, to make him confesse of himselfe, or of his fellowes, or complices, it is not vsed in England, it is taken for seruile. For how can hee serue the Common-wealth as a free man who hath his bodie so haled or tormented, if he be not found guilty, and what amends can bee made him? And if hee must die, what crueltie is it so to torment him before?

fore? Likewise, confession by torment is esteemed for nothing, for if he confesse at the judgement, the triall of the welue goeth not vpon him: if hee deny the fact: that which he said before hindreth him not. The nature of Englishmen is to neglect death, to abide no torment: And therefore he will confesse rather to haue done any thing, yea to haue killed his owne father than to suffer torment: for death our Nation doth not so much esteeme as a meere torment. In no place shall you see malefactors goe more constantly, more assuredly, and with lesse lamentation to their death than in England.

Againe, the people not accustomed to see such cruell torments wil pitie the person tormented, and abhorre the Prince and the Iudges, who should bring in such crueltie amongst them, and the welue men the rather absolue him. There is an old Law of England, that if any layler shall put any prisoner being
in

in his custody to any torment, to the intent to make him an approuer, that is to say, an accuser, or *Index* of his complices, the Iayler shall dietherefore as a Felon. And to say the truth, to what purpose is it to vse torment? For whether the malefactor confesse or no, & whatsoever hee saith, if the Enquest of twelue do find him guiltie, he dieth therefore without delay. And the malefactor seeing there is no remedy and that they be his Countrymen, and such as hee hath himselfe agreed vnto, if they doe finde him worthy death yeelds for the most part vnto it, and doth not repine, but doth commodate himselfe to aske mercy of God.

The nature of our Nation is free, stout hault, prodigall of life and bloud: but contumely, beating, seruitude, and seruile torment, and punishment, it will not abide. So in this nature and fashion, our ancient Princes, and *Legislators* haue nourished them as to make them stout-hearted, couragious, and

and Souldiers, not Villaines and flauces, and that is the scope almost of all our policie.

Therwelue as soone as they haue giuen their Verdict are dismissed to goe whether they will, and haue no manner of commodity and profit of their labour, and Verdict, but onely doe seruice to the Prince and Common-wealth.

CHAP. XXVIII.

Of Treason, and the triall which is used for the higher Nobilitie and Barons.

THe same order touching triall by Enquest of twelue men is taken in treason, but the paine is more cruell. First, to be hanged, taken downe aliue, his bowels taken out, and burned before his face, then to bee beheaded, and quartered, and those set vp in diuers places. If any Duke, Marquesse, or any other of the degrees
of

of a Baron; or aboue, Lord of the Parliament be appeached of treason, or any other capitall crime, he is judged by his Peeres and equals: that is, the Yeomanrie doth not go vpon him, but an Enquest of the Lords of the Parliament, and they giue their voice, not one for all, but each seuerally as they doe in Parliament, beginning at the youngest Lord. And for Iudge one Lord sitteth, who is Constable of England for that day. The judgement once giuen, he breaketh his staffe, and abdicateth his office. In the rest there is no difference

from that aboue

written.

THE



THE THIRD BOOKE.

CHAP. I.

Of that which in other Countries is called Appellation, or Pronocation, to amend the iudgement of sentence definitiue, which is thought vniustly giuen in causes Criminall.



IF the enquest of twelue men doe seeme to the Iudges, & the Iustices to haue gone too violently against the euidence giuen in matters criminal, either it is, that vpon slender euidence they haue pronounced him guiltie, whom the Iudges and most part of the Iustices thinke by the euidence not fully proued guiltie, or
for.

for some other cause, doethinke the person rather worthy to liue than to die. The enquest is neuerthelesse dismissed : but when the iudges should pronounce the sentence of death vpon the person found guilty, he will deferre it, which is called, to repriue the prisoner, (that is to say, to send him againe to prison) and so declare the matter to the Prince, and obtaineth after a time for the prisoner his pardon : and as for prouocation or appeale, which is vsed so much in other countries, it hath no place in England after sentence giuen by the twelue, whereby the person is found guiltie or not guiltie : but, without that repriuing, the sentence is straight put in execution by the Sherife. And if they escape, or die another death, the Sherife escapeth not to pay a great fine and ransome at the Princes mercie : if hauing pregnant euidence, neuerthelesse, the twelue, doe acquit the malefactor, which they

they will do sometime, & especially if they perceiue either one of the Iustices or of the Iudges, or some other man to pursue too much, and too malitiously the death of the prisoner, and doe suspect some subornation of the witnessse, or of them which doe giue euidence, and sometime if they perceiue the Iudge would haue the prisoner escape, and in repeating the euidence doe giue them thereof some watchword. But if they doe (as I haue said) pronounce ~~not~~ guiltie vpon the prisoner, against whome manifest witnessse is brought in, the prisoner escapeth: but the twelue not only rebuked by the Iudges, but also threatned of punishment: and many times commanded to appeare in the Starre chamber, or before the priuie Counsell for the matter. But this threatening chanceth oftner then the execution thereof, and the twelue answere with most gentle wordes, they did it according to their consciences,

ences, and pray the Iudgesto be good vnto them they did as they thought right and as they accorded all, and so it passeth away for the most part. Yet I haue seene in my time (but not in the raigne of the King now) that an enquest for pronouncing one guiltie of treason contrarie to such euidence as was brought in, were not onely imprisoned for a space, but a huge fine set vpon their heads, which they were faine to pay : An other enquest for acquitting another, beside paying a fine money, put to open ignominie and shame. But those doings were euen then of many accounted very violent, tyrannical, and contrary to the libertie and custome of the Realme of England. Wherefore it commeth very seldome in vse, yet so much at a time the enquest may be corrupted, that the Prince may haue cause with iustice to punish them : For they are men, and subiect to corruption & partiality, as others be.

CHAP. II.

*What remedie is, if sentence bee
thought vniustly giuen.*

IN causes ciuill there is another:
Order for if after the matter be
pleaded to the issue, and the twelve
men thereupon impanelled, the
evidence brought and pleaded be-
fore them on both parties, the
twelve seeme to be partial, and to
haue giuen sentence contrary to the
evidence shewed vnto them, the
partie griued may bring against
them, and the party for whom the
sentence is giuen, a writ of attain-
t: and whereas before vpon the first
quest cōmonly they shall be Yco-
men now vpon this attain-
t must goe foure and twentie Gentlemen
dwelling within the shire, and
twelve at the least of the hundreth
where the land lieth, The matter
is pleaded againe before the same
Iudges. The party defendant is not
onely now he who claimeth the
land,

land, but also all and euery of the Yeomen, who by their verdict did give it him.

There must in the attaint no more euidence be brought in, but onely that which was brought in and alledged before the first enquest. And if this second enquest of foure and twenty Gentlemen do adiugde as the first did, the Plaintife shall not onely loose the land, but also pay a fine to the Prince, and damages to the partie. If this second enquest doe find that the first enquest haue gone partially, and against the euidence brought in before them, the first enquest is called attainted, and accounted as periured and infamed. The Prince had before, the waist of all landes and possessions with other punishments, which at this present by a law made by Parliament in the time of King *Henry* the eight is abolished and now by that law (or act of Parliament, beside other punishment, each of the

the quest attainted payeth vnto the Prince and partie, fīue pound, if it be vnder forty pounds : and if a- boue, then twentie pounds. Attaints bee very seldome put in vre, partly because the Gentlemen will not meete to flaunder and deface the honest Yeomen their neighbours : so that at a long time, they had rather pay a meane fine then to appeare and make the enquest. And in the meane time they will intrcate so much as in them lyeth the parties to come to some composition and agreement among themselues as lightly they do, except either the corruption of the enquest be too eident or the one partie is too obstinate and headstrong. And if the Gentlemen do appeare, gladlier they will confirme the first sentence, for the causes which I haue said, then goe against it. But if the corruption be too much eident, they will not sticke to attain the first enquest : yet after the Gentlemen haue
attainted

attainted the Yeomen, before the sentence bee giuen by the Iudge (which ordinarily for a time is deferred) the parties be agreed, or one of them be dead, the attainr ceaseth.

If any time before the sentence be giuen or put in execution, there be found some such error in the writ, in the processe or forme (as our lawyers be very precise and curious of their formes) that it may be reuocable, it is brought a fresh to the disputation by a writ of error, and all that is done reuerfed, but that is common to all other Countries, where the ciuill law is vsed, which they call *de nullitate processus*, and serueth both in England and in other places aswell in causes criminall, as ciuill. Other kinde of Appellation to reuoke processe, and to make them of short, long: of long infinite: which is vsed by the ciuill law, we haue not in our common law of England. By supplica-

plication to the Prince, and complaint to the Chancellour vpon supposall of losse, or lacke of the euidence, or too much fauour in the Country, and power of the aduersary, there is our Countrey, as well as theirs both stopping and prolonging of Iustice. For what will not busie-heads and louers of trouble, neuer being satisfied, inuent in any Country to haue their desire, which is to vex their neighbours, and to liue alwaies in disquiet? Men euen permitted of God like flies, and lice, and other vermin, to disquiet them who would employ themselves vpon better busines and more necessary for the Common-wealth. These men are hated, and feared of their neighbours, loued and aided of them which gaine by proceffe, and waxe fat by the expence and trouble of other. But as these men ordinarily spend their owne thrift, and make others against their wils to spend theirs: so sometime

being thoroughly knowne, they do not onely liue by the losse like euil husbands, but beside rebuke and shame, by the equitie of the Prince and Courts soueraigne, they come to be extraordinarily punished, both corporally, and by their purse, which thing in my minde is as royall and princely an act, and so beneficiall to the Common-wealth as in so small a matter a King or Queene can doe, for the repose and good education of their subiects.

CHAP. III.

*Of that which in England is called
appeale, in other places accu-
sation.*

IF any man hath killed my father, my sonne, my wife, my brother or next kinsman, I haue choice to cause him to be indited, giuing information to the enquest of enquirie, (although he chance

to escape the Constable or Iustices hands and therefore not to be apprehended) and thereupon to procure him to be outlawed, or else within a yeare and a day I may enter my appeale, that is, mine accusations against him: If I began first to pursue him by information or denunciation to indictment, I am now no partie but the Prince, who for his dutie to God and his Common-wealth and subiects, must see iustice executed against all malefactors and offenders against the Peace, which is called Gods and his, and doth in such manner as I haue said before. If I leaue that and will appeale, which is, profer my accusation against him who hath done to me this iniury, the defendant hath this aduantage to put himselfe to the Iury, which is, to that which before is said to haue that issue and triall by God and his Country, whereof the fashion I haue at large declared: or to de-

mand the triall by battaile, where-
 in both the parties must either
 combate in person, or else finde
 other for them, who be called in
 our law Champions, or Campions,
 some doe enterprete them ἀθλητάς,
 because they be men chofen, fat,
 lustie, fit for the seate, or as the
 French doe terme them *Adroits*
aux armes. Which fight it out by
μονομαχία, or as now they doe call
 it *duellum*, or the Campe, which
 shall haue all things equall: but
 according as *Mars* giueth the
 victory, so the Law is iudged,
 the one as *peractus reus*, the other
 as *calumniator*, to suffer the paine
 of death. So that by the great af-
 fise there is no appellation but
 death or life to the defendant, but
 this is more dangerous and equall,
 for the one or the other must
 die.

So is it not in the grand affise,
 for the *reus* or defendant is onely
 in danger of death. Short it is,
 from day to Sunne set, the quar-
 rell

rell is ended, or sooner, who hath the better fortune. That seemeth very militarie (as in manner all our pollicy of England) and to haue as small to do with Lawyers, as with Phisitions, quickly to dispatch, and for the rest to returne, each man to his businesse to serue the Common-wealth in his vocation. The Popes of Rome, and men of the Church, who of long time haue had dominion in our consciences, and would bring things to a more moderation, haue much detested this kinde of triall and iudgement, as reason is euerie man misliketh that which is not like to his education, and cold reasoning by Theologie and Philosophie: they (I say) much mislike many things done necessarily in hote pollicy.

At the least a Commonwealth militarie must aduenture many things to keepe it in quiet, which cannot seeme so precisely good to them which dispute thereof in the

shadow and in their studies. How-
 soeuer it be, this kinde of triall a
 long time hath beene vsed. So that
 at this time we may rather seeke
 the experiences of it out of our
 Histories of time passed, then of
 any view or sight thereof, of them
 which are now aliue. Neuerthe-
 lesse the Law remaineth still, and
 is not abolished, and if it shall
 chance the murtherer or man-
 slayer (the one we call him that
 lieth in waite, and as they terme
 it in French *de guet appendant*,
 killeth the man, the other by ca-
 suall falling out and sodaine de-
 bate and choler doth the same
 which way soeuer it be done) if
 he that hath slaine the man hath
 his pardon of the Prince as oc-
 casion or the fauour of the Prince
 may so present that he may haue
 it, yet the partie griued hath these
 two remedies, I say to require iu-
 stice by graund assise, or battle
 vpon his appeale and priuate re-
 uenge, which is not denied him.

And

And if the defendant either by great assise or battaile be conuicted vpon that appeale, hee shall die, notwithstanding the Princes pardon. So much fauourable our Princes and the law of our realme is to iustice and to the punishment of bloud violently shed.

CHAP. IIII.

Of the Court of Starre-chamber.

THere is yet in England another Court, of the which that I can vnderstand there is not the like in any other Countrey. In the Terme time (the Terme time as I haue heretofore shewed, I call the time and those daies when law is exercised in Westminster Hall, which as I haue said, is but at certaine times and Termes) euery weeke once at the least (which is commonly on Fridaies, and Wednesdaies, and the next day after that

that the Terme doth end) the Lord Chancellour, and the Lords, and other of the Priuie Councell, so many as will, and other Lords and Barons which bee not of the priuie Councell, and bee in the Towne, and the Iudges of England, specially the two chiefe Iudges, from nine of the clocke till it be eleuen, doe sit in a place which is called the Starre chamber, either because it is full of windowes, or because at the first all the rooffe thereof was decked with Images or starres gilded. There is plaints heard of riots. Riot is called in our English terme or speech, where any number is assembled with force to doe any thing: and it had the beginning, because that our men being much accustomed either in forraine wars in France, Scotlād, or Irelād or being ouermuch exercised with ciuill warres within the Realme (which is the fault that falleth ordinarily amongst bellicous Nations) whereby

by men of warre, Captaines and Souldiers become plentiful: which when they haue no externe seruice wherewith to occupie their busie heads and hands accustomed to fight and quarrell, must needs seek quarels and contentions amongst themselves, and become so readie to oppresse right among their neighbours, as they were wont before with praise of manhood to be in resisting iniury offered by their enemies. So that our Nation vsed heereunto, and vpon that more insolent at home, and not easie to be gouerned by law and politicke order, men of power beginning many frates, and the stronger by factions and parties offering too much iniurie to the weaker, were occasions of making good lawes. First of retainers, that no man should haue aboue a number in his Livery or retinue, then of the enquire of routs and riots at euery Sessions, and of the law whereby it is provided that if

any by force or by riot enter vpon any possessions, the Iustices of the Peace shall assemble themselves, and remoue the force, and within certaine time enquire thereof.

And further, because such things are not commonly done by the meane men, but such as bee of power and force, and be not to be dealt withall with euery man, nor of meane Gentlemen: if the riot be found and certified to the Kings Counsell, or if otherwise it bee complained of, the party is sent for, and he must appeare in the Starre-chamber: seeing (except the presence of the King onely) as it were the maiestie of the whole Realme before him, being neuer so stout, hee will be abashed: and being called to answer as he must come of what degree soeuer he be) he shall be so charged with such grauitie, with such reason, and remonstrance, and of those chiefe personages of England, one after

another handling him on that sort,
that what courage soeuer he hath,
his heart will fall to the ground,
and so much the more, when if he
make not his answer the better,
as seldome hee can so in open vio-
lence, he shall be commanded to
the Fleet, where he shall be kept in
prison in such sort as these Iudges
shall appoint him, and lie their
till hee bee wearie aswell of the
restraint of his libertie, as of the
great expences, which hee must
there sustaine, and for a time bee
forgotten, whiles after long suit
of his friends, hee will be glad to
be ordered by reason. Sometime
as his deserts be, he payeth a great
fine to the Prince, besides great
costs and dammages to the partie,
and yet the matter wherefore he
attempted this riot and violence, is
remitted to the common law. For
that is the effect of the Court, to
bridle such stout Noblemen, or
Gentlemen which would offer
wrong by force to any manner of
men,

men, and cannot be content to demand or defend the right by order of the law. This Court began long before, but tooke augmentation and authoritie at that time that Cardinall *Wolsey* Archbishop of Yorke was Chancellour of England, who of some was thought to haue first deuised that Court, because that he after some intermission by negligence of time augmented the authoritie of it, which was at that time marueilous necessarie to doe, to repress the insolencie of the Noblemen and Gentlemen of the North parts of England, who being farre from the King and the seat of iustice, made almost as it were an ordinarie warre among themselues, and made their force their Law, banding themselues with their Tenants, and Seruants, to doe or reuenge iniury one against another as they listed. This thing seemed not supportable to the Noble Prince *Henry* the eight : and
sending

sending for them one after another to his Court, to answer before the persons before named, after they had had remonstrance shewed them of their euill demeanour, and beene well disciplined, as well by words as by flecting a while, and thereby their pride and courage somewhat asswaged, they began to range themselves in order, and to vnderstand that they had a Prince who would rule his subjects by his law and obedience. Sith that time this Court hath beene in more estimation, and is continued to this day in manner as I haue said before.

The Iudges of this Court are the Lord Chancellour, the Lord Treasurer, all the Kings Maiesties Counsell, the Barons of this Land.

The officers therein are a Clark, three Attornies, an Examiner.

The Clarke keepeth the records, rules, entries, orders, and decrees, made in this Court.

The

The three Attornies are the plantife, and for the defendante to frame their complaints, and answeres, and make the matter apt to be heard for the Lordes.

The Examiner taketh the depositions of the witnesses of both sides, to the prooffe or disproofe of the cause.

The order of proceeding to iudgment is by assent of voyces, and open yeelding their mind in Court, the maior part being preferred for sentence.

The punishment most vsuall, is imprisonment, pillory, a fine, and many times both fine and imprisonment.

The processe in a subpena, an attachment, a proclamation of rebellion, and a commiffion of rebellion.

This Subpena is in manner of a libell or precept.

The Proclamation and commiffion of rebellion serueth when the partie is stubborne, hauing made

made contempt, and commeth not in by the former processe.

The Messengers of this Court are the warden of the Fleete : or the Serg'ants at Armes.

The matters belonging most commonly, are by statutes, as is taken away of maids within age against parents or guardians will. See *Anno. 4. & 5. Phil. & Maria. cap. 8.* All notable forgeries, counterfetting letters or priuie tokens. See *Hen. Anno. 33. cap. 1. An. 5. Eliz. cap. 11.* flandering of Nobles, and seditious newes. See *R. 2. Anno. 2. cap. 5. Anno. 1. & 2. Phil. & Maria. cap. 2. Anno. 2. 3. Eliz. cap. 7.* All notable riots and unlawfull assemblies. See *Anno. 1. Eliz. cap. 17.* And all the titles of Ryots in Rastals Abridgement, all notable deceits, and all kind of couzenage &c.

CHAP. V.

*Of the Courts of Wards
and Lineries.*

HE whom wee call a Ward in England, is called in Latine *pupillus*, and in Greeke *ὑπάρχων*. The Guardian is called in Latine *tutor*, in Greeke *ἐπίτροπος*. A Ward or Infant is taken for a child in base age, whose Father is dead. The Romans made two distinctions, *pupillum & minorem*, the one fourteene yeere old, the other was accounted from thence to five and twenty. And as *pupillus* had *tutorem*, so *minor* had *curatorem*, till hee came to the age of five and twenty. These Tutors or Curators were accountable for the reuenues of the Pupils, and Minors Lands, and great prouision, and many Lawes and Orders bee made for them in the Bookes of the Ciuill Law, for rendring just and true accounts. So that to be a Guardian

or Tutour was accounted among them to be a charge or trouble, a thing subject to much incumbrance and small profit, so that diuers meanes were sought for, to excuse men from it. With vs this is cleane contrary, for it is reckoned a profit to haue a Ward. For the Lord of whom the ward doth hold the land, so soone as by the death of the Father the child falleth ward vnto him, hee seizeth vpon the body of the Ward, and his lands, of which (so that he doth nourish the Ward) hee taketh the profits without accounts. And beside that offering to his Ward conuenable marriage without disparagement before the age of one and twentie yeares if it be a man, of fourteene if it be a woman. If the Ward refuse to take that marriage, hee or she must pay the value of the marriage, which is commonly rated according to the profit of his Lands. All this while I speake of, that which is called in French
garde

garde noble, that is, of such as hold lands of others by Knights service, for that is another kind of service, which wee call in French *gard rentier*, wee call it *gard in socage*, that is, of such as doe not hold by Knights Service, but by tenure of the Plough. This Wardship falleth to him who is next of the kin, and cannot inherit the Land of the Ward, as the Vncle by the Mothers side, if the Land doe descend by the Father, and of the Fathers side, if the Land doe descend by the Mother. This Guardian is accountable for the reuenues and profits of the Land, as the Tutor by the Ciuill Law to the Ward or Pupill so soone as hee is full of age.

The man is not out of Wardship by our Law till one and twentie yeare old, from thence hee is reckoned of full age, as well as in the Romane Lawes at fiue and twentie.

The woman at fourteene is out
of

of Ward, for she may haue a Husband able to doe the Knights Seruice, say our Bookes. And because our Wiues be in the power (as I shall tell you hereafter) of their Husbands, it is no reason shee should be in two diuers guards.

Many men doe esteeme this Wardship by Knights Seruice very vnreasonable and vnjust, and contrary to nature, that a Freeman and Gentleman should bee bought and sold like an Horse or an Oxe, and so change Guardians as Masters and Lords: at whose gouernment not onely his bodie but his lands and his houses should be, to be wasted and spent without accounts, and then to marry at the will of him, who is his naturall Lord, or his wil who hath brought him to such as hee likes not peraduenture, or else to pay so great a ranfome. This is the occasion they say, why many Gentlemen bee so euill brought vp touching vertue and learning, and but onely in dain-

daintinesse and in pleasure : and why they be married very yong, and before they be wise, and many times doe not greatly loue their wiues. For when the Father is dead, who hath the natural care of his childe, not the Mother, nor the Vncle, nor the next of kinne, who by al reason would haue most naturall care for the bringing vp of the Infant and *Minor*, but the Lord of whom he holdeth his land in Knights Service, be it the King or Queene, Duke, Marquesse, or any other, hath the gouernment of his body, and marriage, or else who that bought him at the first, second, or third hand. The Prince as hauing so many, must needs giue or sell his Wardes away to other, and so he doth. Other do but seeke which way they may make most aduantage of him, as of an Oxe, or other Beast. These all (say they) haue no naturall care of the Infant, but of their owne gaine, and especially the buyer will not suffer his
Ward

Ward to take any great paines, either in studie or any other hardnesse, lest he should be sicke and die, before hee hath married his Daughter, Sister, or Cousin, for whose sake hee bought him, and then all his money which hee paid for him should be lost. So he who had a Father which kept a good house, and had all things in order to maintaine it, shall cometo his owne, after he is out of Wardship, Woods decayed, Houses falne downe, stocke wasted and gone, Lands lent forth, and plowed to the barren, and to make amends, shall pay yet one yeares rent, for reliefe, and sue *ouster le mains*, beside other charges, so that not of many yeares, and peradventure neuer hee shall be able to recouer, and cometo the estate where his Father left it. This as it is thought was first granted vpon a great extremitie to King *Henry* the third for a time vpon the warre which he had with the Barons, and afterward

ward increased, and multiplied to more and more persons and grievances, and will bee the decay of the Nobilitie and libertie of England. Other againe say, the Ward hath no wrong, for either his Father purchased the Land, or it did not discend vnto him from his Ancestours with his charge. And because hee holdeth by Knights Seruice, which is in armes and defence, seeing that by age he cannot do that whereto hee is bound by the Land, it is reason hee answer that profit to the Lord, whereby hee may haue as able a man to doe the seruice. The first Knights in Rome, those that were chosen *Equites Romani* had *equum publicum*, on which they serued, and that was at the charge of the Widowes and Wards as appeareth by *Titus Linius*, because that those persons could not doe bodily seruice to the Common-wealth. Wherefore this is no new thing, but reasonable in that most wise Com-

Common-wealth, and to the prudent King *Servius Tullius*. As for the education of our Common-wealth, it was at first *Militarie*, and almost in all things the scope and designe thereof is *Militarie*. Yet it was thought most like, that Noblemen, good Knights, and great Captaines, would bring vp their Wards in their owne feates and vertues, and then marry them into like race and stocke, where they may finde and make friends. Who can better looke to the education, or hath better skill of the bringing vp of a Gentleman, than hee who for his higher Nobilitie hath such a one to hold of him by Knights Service, or would doe it better then he that looketh or may claime such Service of his Ward, when age and yeares will make him able to doe. That which is said that this manner of Wardship began in the time of King *Henrie* the third, cannot seeme true. For in Normandie and other places of France

France the same order is.

And that Statute made in King Henry the Thirds time touching Wards, to him that will weigh it well, may seeme rather a qualification of that matter, and an argument that the fashion of Wardship was long before: but of this matter an other time shal be more convenient to dispute. This may suffice to declare the manner of it.

The Iudge in this Court is the Master of the Wards.

Officers are the Attornie of the Wards for the King.

The Surueyor, the Auditor, the Treasurer, the Clarke, two common Attornies, inferiour Officers, also Messengers, and Pursuivants.

The Attornie for the Wardes is alwayes for the Kings right, and assistant with the Master of the Wards.

The Surueyor is he that hath the allowing of euery Liurey that is sued out.

The Auditor taketh the account,
and

and causeth Proceſſe to be made.

The Treasurer receiueth the money due to his Maieſtie.

The Clarke is writer of the Records, and writer of the Decrees, Proceſſes, and Orders of the Court.

The matters of this Court are all benefits that may come vnto his Maieſtie, by Guard, by Marriage, Priuueer, Seafin, and Reliefe.

The generall Proceſſe in this Court is a Commiſſion, a Proceſſe in manner of a Proclamation, warning the partie or parties to appeare before the Maſter of the Wards. More ſpeciall Proceſſe belonging to this Court, are a *Diam clauſit extremum*, a *Deuenerunt*, a *melius inquirendum*, a *Datum eſt nobis intelligi*, a *Qua Plura*. Of the nature of theſe, ſee *Stamford's Booke of the Kings Prerogatiue*.

Out of this Court are the Liuc-
ries ſued, and committed to the
Clarkes of the Petty Bagge, Offi-

M cers

cers in the Chancery.

When the heire hath proued his age, and sued his Liuary, then hee must doe homage to him that is the Deputy of the Prince for that purpose, and then must pay a fine or fee to the Lord Priuy Seale.

CHAP. VI.

Of the Duchie Court.

THe Duchie Court of Lancaster is also the Kings Court of Record. In it are holden all Pleas reall and personall, which concerne any of the Duchie lands, now in his Maiesties hands and parcell of the Crowne: but serued in Court and jurisdiction.

The Iudge in this Court is the Chancellor, assisted by the Attur-
nie of the Duchie for the King, the Clarke of the Court, diuers Sur-
ueyors, two common Atturnies,
diuers Auditors, two Assistants,
the Sergeant of his Majestie.

The

The Chancellour is a Iudge of the Court, to see Iustice administred betweene his Majesty and his Subjects, and betweene partie and partie.

The Atturrie is to maintaine the Kings, and is assistant to the Chancellour, and sheweth him what the Law is.

The Clarke keepeth the Rolles and Records, and maketh the Proceffe.

The Surueyours are diuers: one more principall: they suruey the Kings land within the Duchie.

The Auditours are diuers: one more principall: they are to account and make the Order of the receits within the Duchie.

The common Atturnies are for the Suitors that haue cause in action within the Court.

The assistants are two Iudges at the Common law that are to aide them in difficult points of law.

The Sergeant for the King, is a learned Counsaillour, appointed to

bee of his Majesties Counsell for his right.

There is also belonging to this Court a Vice-chancelour, that serveth for the County Palatine of Lancaster, he maketh all originall Processes within his libertie, as doth the Lord Chancelour of England for the Chancerie.

The Proceffe of the Countie Palatine, is a *Sub pæna*, as in the Chancerie.

CHAP. VII.

The Court of Requests.

THIS Court is the Court wherein all suites made to his Majestie by way of supplication or petition are heard and ended, neither should it hold plea of any matters then such. And this is called the poore mans Court, because there he should haue right without paying any money : and it is called also the Court of Conscience.

The

The Iudges in this Court are the Masters of Requests, one for the Common Lawes, the other for the Ciuill Lawes.

The Officers in this Court, are the Register, the Examiner, three Attornies, one Messenger or Pursuant.

The Examiner is hee that opposeth the witnessses by oath, and recordeth their depositions.

The Attornies serue for the Plaintiffe and Defendant to frame their complaints and answeres.

The Pursuant is an Officer in this Court, to bring any man before the Iudges whom they shall name.

The matters in this Court at this day, are almost all suites that by colour of equitie or supplication made to the Prince, may bee brought before them: properly all poore mens suites, which are made to his Majestie by supplication.

The Processe in this Court, are a priuy Seale, Proclamation of rebellion.

The nature of these Proceſſes is, as was ſaid before in the Court of Starre Chamber.

CHAP. VIII.

Of Wines and Marriages.

THe Wiues in England be as I ſaid in *poteſtate maritorum*, not that the Husband hath *vita ac necis poteſtatem*, as the Romans had in the old time of their children, for that is onely in the power of the Prince, and his Lawes, as I haue ſaid before, but that whatſoeuer they haue before marriage, as ſoone as marriage is ſolemnized is their husbands, I meane of Money, Plate, Jewels, Cattraile, and generally all moueables. For as for land and heritage followeth the ſucceſſion, and is ordered by the Law, as I ſhall ſay hereafter: and whatſoeuer they get after marriage, they get to their husbands. They neither can giue nor ſell any thing
either

either of their Husbands or their owne. There is no moueable thing is by the Law of England *constanti matrimonio*, but as *peculium seruiant familias*, and yet in moueables at the death of her Husband she can claime nothing, but as according as he shall will by his Testament, no more then his sonne can: all the rest is in the disposition of the Executours, if hee die testate. Yet in London and other great Cities they haue that Law and custome, that when a man dieth, his goods bee diuided into three parts. One third part is imployed vpon the buriall and the bequests, which the Testator maketh in his Testament. Another third part the wife hath as her right, and the third part is the due and right of his children, equally to be diuided among them. So that a man there can make Testament but of one third of his goods: If he die intestate, the Funerals deducted, the goods be equally diuided
bc.

betweene the wife and children.

By the common Law of England if a man die intestate, the Ordinary (which is the Bishop by common intendment) sometime the Archdeacon, Dean, or Prebendarie, by priuiledge and prescription, doth commit the administration of the goods to the Widow or the child, or next kinsman of the dead appointing out portions to such as naturally it belongeth vnto, and the Ordinary by common vnderstanding, hath such grautie and discretion as shall be fit for so absolute an authoritie for the most part, following such diuision as is vsed in London, either by thirds or halues. Our forefathers newly conuerted to the Christian faith, had such confidence in their Pastors and instructors, and tooke them to be men of such conscience that they committed that matter to their discretion: and belike at the first were such as would seeke no priuate profit to themselues thereby:

by: that being once ordained hath still so continued. The abuse which hath followed was in part redressed by certaine Acts of Parliament made in the time of King *Henry* the eighth, touching the probate of Testaments, committing of administration, & mortuaries. But to turn to the matter which wee now haue in hand, the wife is so much in the power of her Husband, that not onely her goods by marriage are straight made her husbands, & she loseth al her administration which she had of them: but also where all Englishmen haue name & surname, as the Romans had, *Marcus Tullius*; *Caius Pompeius*, *Caius Iulius*, whereof the name is giuen to vs at the Font, the surname is the name of the Gentilitie and stocke which the Son doth take of the Father alwayes, as the old Romans did, our Daughters so soone as they be married lose the surname of their Father, and of the family & stocke whereof they doe come, and take

the surname of their Husbands, as transplanted from their Family into another. So that if any wife was called before *Philip Wilford* by her own name & her Fathers surname, so soone as she is married to me, she is no more called *Philip Wilford*, but *Philip Smith*, and so must shee write and signe: and as shee changeth Husbands, so shee changeth surnames, called alwayes by the surname of her last Husband. Yet if a woman once marrie a Lord or a Knight, by which occasion shee is called my Lady, with the surname of her Husband, if hee die, and shee take a Husband, of a meaner estate, by whom shee shall not bee called Lady (such is the honour wee doe giue to Women) shee shall still be called Ladie with the surname of her first Husband, and not of the second.

I thinke amongst the olde Romans those marriages which were made *per coemptionem in manum*,
and

and *per as* and *libram*, made the wife *in manu & potestate viri*, whereof also wee had in our olde law and ceremonies of marriage, a certaine memorie as a view and *vestigium*. For the woman at the Church doore was giuen of the Father, or some other man of the next of kinne into the hands of the Husband, and hee laid downe gold and siluer for her ypon the Booke, as though he did buy her, the Priest belike was in steed of *Lipripens*: our marriages be esteemed perfect by the Law of England, when they bee solemnized in the Church or Chappell, in the presence of the Priest and other witnesses. And this onely maketh both the Husband and the Wife capable of all benefits which our Law doth giue vnto them and their lawfull children. In so much that if I marrie the Widow of one lately dead, and at the time of her Husbands death was with child, if the child be born after marriage solemnized with me,

this

this child shall be my heire, and is accounted my lawfull sonne, not his whose child it is indeed: so precisely we doe take the letter where it is said, *pater est quem nuptie demonstrant*. Those waies and meanes which *Iustinian* doth declare to make bastards to bee lawfull children, *muliers*, or rather *mulieus* (for such a Terme our law vseth for them which be lawfull children) be of no effect in England: neither the Pope, nor Emperor, nor the Prince himselfe neuer could there legitimate a bastard to enjoy any benefit of our Law, the Parliament hath onely that power.

Although the wife be (as I haue written before) *in manu & potestate mariti*, by our Law, yet they bee not kept so straight as in a mew, and with a guard as they be in Italy and Spaine, but haue almost as much liberty as in France, and they haue for the most part all the charge of the house and household

household (as it may appeare by
Aristotle and *Plato*, the wiues of
 the Greekes had in their time)
 which is indeed the naturall oc-
 cupation, exercise, office, and part
 of a wife. The husband to meddle
 with the defence eyther by law or
 force, and with al forren matters,
 which is the naturall part and of-
 fice of the man, as I haue written
 before. And although our Law
 may seeme somewhat rigorous to-
 ward the wiues: yet for the most
 part they can handle their husbands
 so wel and so dulcely, and specially
 when their husbands be sicke, that
 where the law giueth them no-
 thing, their husbands at their death
 of their goods will giue them all.
 And few there be that be not made
 at the death of their husbands ei-
 ther sole or chiefe executrices of
 his last will and Testament, and
 haue for the most part the go-
 uernment of the children and their
 portions: except it be in London,
 where a peculiar order is taken by
 the

the Citie much after the fashion of the ciuill Law.

It is auoidable after the husbands death, except it be for one and twentie yeares or 3. liues according to the statute, except they leaue a fine.

All this while I haue spoken onely of moucable goods. If the wife be an inheritrix & bring land with her to the marriage: that land descendeth to her eldest sonne, or is diuided among her daughters. Also the manner is, that the land which the wife bringeth to the marriage, or purchase afterwards, the husband cannot sell nor alienate the same, no not with her consent, nor she her selfe during the marriage, except that she bee sole examined by the Iudge at the common law: and if he haue no child by her and shee die, the land goeth to her next heires at the common law: but if in the marriage he haue a child by her, which is heard once to crie, whether the child liue or die, the husband shall haue the vsufruit of her lands (that is the profit of them) during his life and that is called the curtesie of England.

Like-

Likewise if, the husband haue any Land, either by inheritance descended, or purchased & bought, if he die before the wife, she shall haue vsufruit of one third part of his lands. That is, she shall hold the one third part of lands during her life as her dowry, whether hee hath child by her or no. If she hath any children, therest descendeth straight to the eldest: if he hath none, to the next heire at the common law: and if she mislike the diuision, she shall aske to be endowed of the fairest of his lands to the third part.

This which I haue written touching marriage and the right in-moueables & vn-moueables which commeth thereby, is to be vnderstood by the common Law, when no priuate contract is more particularly made. If there bee any priuate pacts, couenants and contracts made before the marriage betwixt the husband and the wife, by themselves, by their pa-
rents,

rents, or other friends, those haue force to be kept according to the firmitie and strength in which they are made : And this is enough of wiues and marriage.

CHAP. IX.

Of Children.

OVr children be not *in potestate parentum*, as the children of the Romans were : but as soone as they be *puberes*, which wee call the age of discretion, before that time nature doth tell they be but as it were *partes parentum* that which is theirs they may giue or sell, and purchase to themselues eyther lands and other moueables, the Father hauing nothing to doe therewith. And therefore *mancipatio* is cleane superfluous, wee know not what it is. Likewise *in heredis* complaints *de inofficio- sa testamento* or *præteritorum liberorum*, non *emancipatorum*, haue no effect.

effect nor vse in law, nor wee haue no manner to make lawfull children but by marriage, and therefore we know not what is *adoptio*, nor *arrogatio*. The Testator disposeth in his last will his moueable goods freely as he thinketh meete and conuenient without controulement of wife or children. And our testimonies for goods moueable be not subiect to the ceremonies of the ciuill law, but made with all liber-
 tie and freedome, and *iure militari*. Of lands, as yee haue vnderstood before, there is difference: For when the owner dieth, his land descendeth only to his eldest sonne, all the rest both sonnes and daughters haue nothing by the common law, but must serue their eldest brother if they will, or make what other shift they can to liue: except that the Father in his life time doe make conueyance, and estate of part of his land to their vse, or else by deuise, which words amongst our lawyers doe betoken

a Testament written, sealed and deliuered in the time of the Testator before witnesse : for without those ceremonies a bequeast of lands is not auailable. But by the common Law, if he that dieth had no sonnes but daughters, the land is equally deuided amongst them, which by portion is made by agreement or by lot. Although (as I haue said, ordinarily and by the common Law, the eldest son inheriteth all the lands, yet in some Countries haue equall portion, and that is called gavel-kind, and is in many places in Kent. In some places the youngest is sole heire : and in some places after another fashion. But these being but particular customes of certaine places, and out of the rule of common law, doe little appertaineto the disputation of the pollicie of the whole Realme, and may bee infinite. The Common-wealth is iudged by that which is most ordinarily

dinarily and commonly done
through the whole Realme.

CHAP. X.

Of Bondage and Bondmen.

After that we haue spoken of
of all the sorts of freemen
according to the diuersitie of their
estates and persons, it resteth to
say somewhat of bondmen, which
were called *serui*, which kind of
people and the disposition of them
and about them doth occupie
the most of *Iustinians Digestes*,
and *Code*. The Romans had two
kindes of bondmen, the one which
were called *serui*, and they were
either which were bought for mo-
ney, taken in warre, left by succes-
sion, or purchased by some other
kinde of lawfull acquisition, or
else borne of their bondwomen,
and called *verna*: all those kind
of bondmen bee called in our law
villains in grosse, as ye would say
im-

immediatly bond to the person and his heires. Another they had (as appeareth in *Iustinians* time which they called *adscriptiti gleba* or *agri censiti*. These were not bond to the person, but to the Manor or place, and did follow him who had the Manors, and in our law are called villaines regardants, for because they be as members, or belonging to the Manor or place. Neither of the one sort nor of the other haue wee any number in England. And of the first I neuer knew any in the Realme in my time. Of the second, so few there be, that it is not almost worth the speaking, but our law doth acknowledge them in both those sorts.

Manumission of that kinde of villaines or bondmen in England, is vsed and done after diuers sorts, and by other, and more light and easie meanes than is prescribed in the ciuill Law: and being once manumitted: hee is not *libertus*

manumittentis, but simply *liber*: howbeit, since our Realme hath receiued the Christian Religion, which maketh vs all in Christ brethren, and in respect of God and Christ, *conseruos*, men began to haue conscience to hold in captiuitie, and such extreme bondage, him whom they must acknowledge to bee their brother, and as wee vse to terme him a Christian, that is, who looketh in Christ, and by Christ, to haue equall portion with them in the Gospell and saluation.

Vpon this scruple, in continuance of time, and by long succession, the holy Fathers, Monkes and Friars, in their confession, and specially in their extreame and deadly sicknesses, burdened the consciences of the whom they had vnder their hands: so that temporall men by little and little, by reason of that terror in their conscience, were glad to manumitte all their villains: but the said holy Fathers,

Fathers, with the Abbots and Priors, did not in like sort by theirs, for they had also conscience to empouerish & dispoile the Church so much as to manumit such as were bond to their Churches, or to the Manors which the Church had gotten, and so kept theirs still. The same did the Bishops also, till at the last, and now of late, some Bishops (to make a peece of money) manumitted theirs, partly for argent, partly for slanders, that they seemed more cruell than the temporality: after the Monasteries comming into temporall mens hands, haue beene occasion that now they be almost all manumitted. The most part of bondmen whē they were, yet were not vsed with vs, so cruelly, nor in that sort as the bondmen at the Romans ciuil law, as appeareth by their comedies: nor as in Greece, as appeareth by theirs: but they were suffered to enioy coppinghold land, to gaine and get as other seruants,

seruants, that now and then their
 Lords might fleccethem, and take
 a peece of money of them, as in
 France the Lords doe taile them
 whom they call their Subiects, at
 their pleasure, and cause them to
 pay summes of money as they list
 to put vpon them. I thinke both in
 France and England, the change
 of Religion to a more gentle, hu-
 mane, and more equall sort, (as
 the Christian Religion, is in respect
 of the Gentiles) caused this old
 kinde of seruile seruitude and sla-
 uerie, to be brought into that mo-
 deration, for necessitie, first to
 villaines regardants, and after to
 seruitude of landes and tenures,
 and by little and little finding out
 more ciuill and gentle meanes, and
 more equall to haue that done
 which in time of heathenesse, ser-
 uitude, or bondage did, they al-
 most extinguished the whole. For
 although all persons Christians bee
 brethren by Baptisme in I E S V S
 Christ, and therefore may appeare
 equally

equally free, yet some were, and still might bee Christned being bond and serue, and whom as the baptisme did finde, so it did leaue them, for it changeth not ciuill lawes nor compactes amongst men which be not contrarie to Gods lawes: but rather maintaineth them by obedience.

Which seeing men of good conscience hauing that scruple whereof I wrote before, haue by little and little found meanes to haue and obtaine the profit of seruitude and bondage which Gentilitie did vie, and is vsed to this day among Christians on the one part, and Turkes and Gentiles on the other part, when Warre is betwixt them, vpon those whom they take in battaile. Turkes and Gentiles I call them, which vsing not our Law, the one belieueth in one God, the other in many Gods, of whom they make Images. For the Law of Iewes is well enough knowne, and at this day so farre as I can learne,

learne, amongst all people Iews bee holden as it were in a common seruitude, and haue no rulenor dominion as their owne propheties doe tell, that they should not haue after that Christ promised to them, was of them refused : for when they would not acknowledge him, obstinately forsaking their helpe in soule for the life to come, and honour in this world for the time present, not taking the good tidings, newes, and Euangell brought to them by the great grace of God, and by the promise of the Prophets fructified in vs which be Gentiles, and brought forth this humanitie, gentlenesse, honour, and godly knowledge which is seene at this present. But to returne to the purpose.

This perswasion I say of Christians, not to make nor keepe his brother in Christ, seruile, bond, and vnderling for euer vnto him, as a beast rather then a man, and the humanity which the Christian

N Religion

Religion doth teach, hath engendred through Realmes (not neere to Turkes & Barbarians) a doubt, a conscience, a scruple to haue seruants & bondmen, yet necessitie on both sides, of the one to haue help, on the other to haue seruice, hath kept a figure or fashion therof. So that some wold not haue bondmē, but *adscriptitij gleba*, & villaines regardant to the ground, to the intent their seruice might bee furnished, that the Countrey being euill, vnholosome, and otherewise barren, should not bee desolate. Others afterwards found out the waies and meanes, that not the men, but the Land should bee bond, and bring with it such bondage and seruice to him that occupieth it, as to cary the Lords dung vnto the fields, to plow his ground at certaine daies, sow, reape, come to his Court, sweare faith vnto him, and in the end to hold the land but by copie of the Lords Court rolle, and at the will of the Lord.

The

The tenure is called also in our Law, villaine, bond, or seruile tenure: yet to consider more deeply, all Land euen that which is called most free land, hath a bondage annexed vnto it, not as naturally the lower ground must suffer and receiue the water and filth which fallerh from the higher ground, nor such as *Iustinian* speaketh of *de seruitudinibus praediorum rusticorum & urbanorum*, but the Land doth bring a certaine kinde of seruitude to the possessor. For no man holdeth Land simply free in England, but hee or shee that holdeth the Crowne of England: all others hold their Land in fee, that is, vpon a faith or trust, and some seruice to bee done to another Lord of a Manor, as superiour, and hee againe of an higher Lord, till it come to the Prince, and him that holdeth the crowne.

So that if a man die, and it be found that hee hath land which

hee holdeth, but of whom no man can tell, this is vnderstood to bee holden of the Crowne, and *in capite*, which is much like to the Knights seruice, and draweth vnto it three seruices, Homage, Ward, and Marriage: that is, hee shall sweare to be his man, and to be true vnto him of whom he holdeth the land: His sonne who holdeth the land after the death of his Father, shall bee married where it pleaseth the Lord.

Hee that holdeth his land most freely of a temporal man (for frank almes and franke marriage hath another cause and nature) holdeth by fealtie onely, which is, hee shall sweare to be true to the Lord, and to such seruice as appertaineth to the land which he holdeth of the Lord.

So that all freeland in England is holden in fee, or *feodo*, which is as much to say, as *in fide*, or *fiducia*, that is, in trust and confidence,

dence, that hee shall bee true to the Lord of whom he holdeth it, pay such rents, doe such seruice, and obserue such conditions as were annexed to the first donation. Thus all sauing the Prince bee not *veri Domini*, but rather *fiduciarij domini*, and *possessores*.

This is a more likely interpretation then that which *Littleton* doth put in his booke, who saith that *feodum idem est quod hereditas*, which it doth betoken in no language. This happeneth many times to them who be of great wit and learning, yet not scene in many tongues, nor marke not the deduction of wordes which time doth alter. *Fides* in Latine (the Gothes comming into Italy, and corrupting the language) was turned first into *fede*, and at this day in Italy they will say *in fide*, *en fide*, or *ala fe*. And some vncunning lawyers that would make a new barbarous Latine

word, to betoken land giuen in *fidem*, or as the Italian saith, in *fide*, or *fe*, made it *feudum*, or *feodum*. The nature of the word appeareth more euident in those which wee call to *feff*, *feoff*, or *feoffes*, the one be *fiduciarij possessores*: or *fidei commissarij*: the other is, *dare in fiduciam*, or *fidei commissum*, or more latuely, *fidei committere*.

The same *Littleton* was as much deceiued in *Withernam*, and diuers others old words. This *Withernam*, as he interpreteeth *vetitumnarium*, in what language I know not: whereas in truth it is in plaine Dutch, and in our old Saxon language, *Wither nempt*, *alterum accipere*, or *vicissim rapere*, a word that betokeneth that which in barbarous latine is called *represalia*, when one taking of me a distresse, which in latine is called *pignus*, or any other thing, and carrying it away out of the iurisdiction wherein I dwell, I take
by

by order of him that hath iurisdiction, another of him againe, or of some other in that iurisdiction, and doe bring it into the jurisdiction wherein I dwell, that by equall wrong I may cometo haue equall right. The manner of *represalia*, & that we call *Wither-nam*, is not altogether one : but the nature of them both is as I haue described, and the proper signification of the words doe not much differ.

But to returne thither where we did digresse : yce see that where the persons beefree, and the bodies at full liberty, and *maxime ingenui*, yet by annexing a condition to the Land, there is meanes to bring the owners and possessors thereof into a certaine seruitude, or rather libertinity : That the tenants beside paying the rent accustomed, shall owe to the Lord a certaine faith, duty, trust, obedience : and (as wee terme it

certaine seruice, as *libertus*, or *Cliens patrens*: which because it doth not consist in the persons, for the respect in them doth not make the bond, but in the land and occupation thereof, it is more properly expressed in calling the one Tenant, the other Lord of the fee, then eyther *libertus* or *cliens* can doe the one, or *patronus* the other: for these words touch rather the persons, and the office and duty betweenc them, then the possessions: but in our case leauing the possession and land, all the obligation of seruitude and seruice is gone.

Another kinde of seruitude or bondage is vsed in England for the necessitie thereof, which is called apprenticeship. But this is onely by couenant, and for a time, and during the time, it is *vera seruitus*. For whatsoeuer the Apprentice getteth of his own labour, or of his masters occupation or stocke,
he

he getteth to him whose Appren-
tice he is, he must lie forth of his
masters doores, hee must not oc-
cupie any stocke of his owne, nor
marry without his masters li-
cence, and he must doe all seruile
offices about the house, and bee
obedient to all his masters com-
mandements, and shall suffer such
correction as his master shall
thinke meete, and is at his masters
cloathing, and nourishing, his
master being bound onely to this
which I haue said, and to teach
him his occupation, and for that
he serueth some, for seuen or eight
yeares, some nine or ten yeares, as
the masters and the friends of the
young man shall thinke meete, or
can agree: altogether (as *Polidore*
hath noted) *quasi pro emptio ser-*
uo. Neuerthelesse, that neither
was the cause of the name Ap-
prentice, neither yet doth the
word betoken that which *Poli-*
dore supposeth, but a French

N s word,

word, and betokeneth a learner or a scholer.

Apprendre in French is to learne, and *Apprentize* in French (of which tongue wee borrowed this word, and many other) as *Discipulus* in Latine: Likewise he to whom hee is bound, is not called the Lord, but his master, as yee would say his teacher. And the pactions agreed vpon, be but in writing, signed, and sealed by the parties, and registred for more assurance. Without being such an Apprentice in London, and seruing out such a seruitude in the same Citie for the number of yeares agreed vpon, by order of the Citie amongst them, no man being neuer so much borne in London, and of Parents Londoners, admitted to be a Citizen or freeman of London: the like is vsed in other great Cities of England. Besides Apprentices, others be hired for wages.

wages, and be called seruants, or
seruing men and women through-
out the whole Realme, which be
not in such bondage as Appren-
tices, but serue for the time for
daily ministerie, as *serui* and *an-*
cilla did in the time of gentilitie,
and bee for other matters in li-
bertie as full free men and wo-
men.

The sons of
free men of
London are
also free by
birth, ac-
cording to
the custome.

But all seruants, labourers, and
others not married must serue by
the yeare: and if he bee in coue-
nant, hee may not depart out of
his seruice without his masters
licence, and hee must giue his
master warning that hee will de-
part one quarter of a yeare before
the time of the yeare expireth, or
else he shall be compelled to serue
out another yeare. And if any
young man vnmarried be with-
out seruice, he shall be compell-
ed to get him a master, whom
hee must serue for that yeare, or
else hee shall bee punished with
stockes.

stockes and whipping, as an idle
 Vagabond. And if any man mar-
 ried, or vnmarried, not hauing
 rent or liuing sufficient to main-
 taine himselfe, doe liue so idly, hee
 is enquired of, and sometime sent
 to the Iayle, sometime otherwise
 punished as a sturdie Vagabond:
 so much our policy doth abhorre
 idlenesse. This is one of the chiefe
 charges of the Iustices of Peace in
 euery Shire. It is taken for vngen-
 tlenesse, dishonour, and a shew of
 enmitie, if any Gentleman do take
 another Gentlemans seruant (al-
 though his Master doe put him a-
 way) without some certificate
 from his Master, either by word or
 writing that hee hath discharged
 him of his seruice. That which
 is spoken of men seruants, the
 same is, also spoken of women.
 So that all youth that hath not suf-
 ficient reuenues to maintaine it
 selfe, must needs with vs serue, and
 that after an order as I haue writ-

ten. Thus necessitie and want of bondmen hath made men to vse free men as bondmen to all seruile seruices: but yet more liberally and freely, and with a more equality and moderation, than in time of Gentilitie Slaues and Bondmen were wont to bee vsed, as I haue said before. This first and latter fashion of temporall seruitude, and vpon paction, is vsed in such Countries as haue left off the olde accustomed manner of seruants, slaues, bond-men and bond-women, which was in vse before they had receiued the Christian faith. Some after one sort, & some either more or lesse rigorously according as the nature of the people is inclined, or hath deuised amongst themselves, for the necessitie of seruice.

CHAP. XI.

Of the Court which is Spirituall or Ecclesiasticall, and in the Booke of Law Court Christian, Curia Christianitatis.

THe Archbishops and Bishops haue a certaine peculiar jurisdiction vnto them, especially in foure manner of causes: Testaments and Legations, Tithes and Mortuaries, Marriage and adultery, or Fornication, and also of such things as appertaine to Orders amongst themselves & matters concerning Religion. For as it doth appeare, our Ancestors hauing the Common-wealth before ordained and set in frame, when they did agree to receiue the true and Christian Religion, and that which was established before, and concerned externe policie (which their Apostles, Doctors, and Preachers did allow, they held and kept still
with

with that which they brought in the new. And those things, in keeping whereof they made conscience, they committed to them to be ordered and governed as such things of which they had no skill, and as to men in whom for the holiness of their life and good conscience, they had a great and sure confidence. So these matters be ordered in their Courts, and after the fashion and manner of the Ciuill Law, or rather common, by Citation, Libell, *contestationem litis*, Examination of Witnesses priuily, by Exceptions, Replications a part and in Writing, Allegations, Matters by sentences, giuen in writing by appellations, from one to another, as well à *grauamine* as à *sententia definitina*, and so they haue other names, as Proctours, Aduocates, Assessors, Ordinaries, and Commissioners, &c. farre from the manner of our order in the Common

mon Law of England, and from that fashion which I haue shewed you before. Wherefore if I say the Testament is false and forged, I must sue in the Spirituall Law, so also if I demand a Legacie: but if I sue the Exccutor, or Administrator, which is he in our Law, who is in the Ciuill Law, *heres or bonorum mobilium possessor ab intestato*, for a debt which the dead ought me, I must sue in the Temporall Court. These two Courts the Temporall and the Spirituall, bee so diuided, that whosoever sueth for any thing to Rome, or in any Spirituall Court for that cause or action, which may be pleaded in the Temporall Court of the Realme, by an old Law of England, he falleth into a *Premunire*, that is, he forfeiteth all his goods to the Prince, and his bodie to remaine in prison during the Princes pleasure: and not that onely, but the Iudge, the Scribe, the Procuror.

euror, and Assessor which receiveth and doth maintayne that vsurped pleading, doth incurre the same danger. Whether the word *Premunire* doth betoken that the authoritie and jurisdiction of the Realme is provided for before, and defended by that Law, and therefore it hath that name *Premunire*, or *Premuniri*, or because that by that Law such an attemptor hath had warning giuen before to him of the danger, into which hee falleth by such attempt, and then *Premunire* is barbarously written for *Premunere*, *Premuniri*, (as some men haue held opinion) I will not define: the effect is as I haue declared: and the Law was first made in King *Richard* the Second's time, and is the remedie which is vsed when the spirituall jurisdiction will goe about to encroach any thing vpon the Temporall Courts. Because this Court or forme which is called *Curia*
Christi

Christianitatis, is yet taken as appeareth for an externe and forraine Court, and differeth from the policie and manner of gouernment of the Realme, and is an other Court (as appeareth by the Act and Writ of *Pramunire*,) than *Curia Regis aut Regina*: yet at this present this Court as well as others, hath her force, power, authoritie, rule, and iurisdiction, from the Royall Majestie, and the Crowne of England and from no other forraine Potentate or Power vnder God, which being granted (as indeed it is true) it may now appeare by some reason that the first Statute of *Pramunire*, whereof I haue spoken, hath now no place in England, seeing there is no pleading *alibi quàm in Curia Regis ac Regina*.

I haue declared summarily as it were in a Chart or Map, or as *Aristotle* termeth it *ὡς ἐν χάρτῃ* the forme and manner of gouernment of

of England, and the policie thereof, and set before your eyes the principall points wherein it doth differ from the policie or government at this time vsed in France, Italy, Spaine, Germany, and all other Countries, which do follow the Ciuill Law of the Romanes, compiled by *Iustinian* into his Pandects and Code, not in that sort, as *Plato* made his Commonwealth, or *Xenophon* his Kingdome of Persia, nor as Sir *Thomas More* his *Utopia*, being fained Commonwealthes, such as neuer was nor shall be, vaine imaginations, fantasies of Philosophers, to occupie the time, and to exercise their wits: but as England standeth, and is gouerned at this day the eight and twentie of March, Anno 1565. in the seuenth yeere of the Raigne and Administration thereof by the most religious, vertuous, and noble Queene ELIZABETH, Daughter to King
Henry

Henry the Eighth, and in the one and fiftieth yeere of mine age, when I was Ambassadour for her Majestie, in the Court of France, the Scepter whereof at that time the noble Prince and great hope *Charles Maximilian* did hold, hauing then raigned foure yeeres. So that whether I write true or not, it is easie to be seene with eyes (as a man would say) and felt with hands. Wherefore this being as a project or Table of a Common-wealth truly laid before you, not fained by putting a case: let vs compare it with Common-wealths which be at this day in *esse*, or doe remayne described in true Histories, especially in such points wherein the one differeth from the other, to see who hath taken righter, truer, and more commodious way to gouerne the people as well in warre as in peace. This will bee no illiberall occupation for him that is a Philosopher and hath a delight in disputing,

ting, nor vnprofitable for him
who hath to doe, and hath good
will to serue the Prince and Com-
mon-wealth, in giuing Coun-
saile for the better ad-
ministration
there-
of.



Thomas Smith.

FINIS.



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